Syn. 8. 62. 124

LITTLETONS TENVRES IN ENGLISH,

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Cum Priuilegio Regiæ Maiestatis.

S2

A figure of the diuision of Possessions.

57... 4.20

TEnant in fée ſimple is hée which hath Lands or Tenements to hold to him and to his heires for euer: and it is called in Latin Feodum ſimplex: for Feodum is called inheritaunce, and Simplex is as much to ſay, as lawfull or pure, and ſo Feodum ſimplex, is as much to ſay, as lawfull or pure inheritaunce: For if a man will purchaſe lands or tenements in fée ſimple, it behoueth him to haue theſe wordes in his purchaſe, To haue and to hold vnto him and to his heires. for theſe wordes (his heires) make the eſtate of inheritance, Anno 10. Henrici 6. fol. 38. for if any man purchaſe land by theſe wordes: To haue and to hold to him for euer: or by ſuch wordes, To haue and to hold to him and to his aſſignes for euer, In theſe two caſes hee hath none eſtate but for terme of lyfe, for that that hee lacketh theſe wordes (his heires) which wordes onely make the eſtate of inheritaunce in all freoffements and graunts.

And if a man purchaſe lands in fée ſimple, & die without iſſue, euery one that is his next coſin collaterall, of the whole bloud, how far ſoeuer that he be from him of degree, may inherit & haue the ſame land as heire vnto him. But if there be father & ſon, and the father hath a brother which is vncle vnto the ſon, & the ſon purchaſeth land in fée ſimple, & dieth without iſſue liuing the father, the vncle ſhall haue the land, as

heire vnto the sonne, and not to the father (yet the father is more nigh of blood vnto the son) for that that there is a ground in the law, that inheritance may lineally descend, but not lineally ascend: yet if the son in such case dye without issue, & his Uncle entreth into the land as heire vnto the son (so as he ought by the law) and after if the Uncle decease without issue living the Father, then shal the Father haue the land as heir vnto the Uncle, & not as heir vnto the son, for that that he commeth vnto the land by collaterall discent, & not by lineal ascention.

And in such case where the son purchaseth land in fee simple, and dieth without issue, they of his blood on the Fathers side shall inherit as heire vnto him, before any of the blood of the Mothers side. But if he haue no heire on the Fathers side, then shall the land descend vnto his heire on the mothers side. And this is the opinion of the Justices M. 12. E 4. fol 35. But there it was holden if any land descend vnto a man by the Fathers side which dieth without issue, that his next heire on the Fathers side shall inherit vnto him, that is to say, the next of blood of the father or the Graundfathers side. And for default of such an heire, they that be of the fathers blood of the part of the mother of the father (that is to say) the Graundmother ought to inherit. And if there be no such heire on the fathers side, then the Lord shall haue the land by Escheate. And so it is if a man take a wife inheritor in fee simple, which

which hath issue a sonne and dyeth, and the sonne entreth into the tenemēts as sonne and heire vnto his mother, and after dyeth without issue, the heires on the mothers side ought to inherit the tenements, and not the heires on the fathers side.

And if there ber no heyres on the mothers side, then the Lord of whom the same land is holden, shall haue the same land by eschеat. In the same manner it is if Lands descend vnto the son on the fathers side, which entreth, and after dieth without issue, the land shall descend vnto the heires on the fathers side, & not vnto the heires on the mothers side. And if there be none heires on the fathers side, then the Lord of whom the land is holden, shall haue ỹ same land by eschеat. And so yee may see the diuersitie, where the sonne purchaseth lands in fee simple, & where hee commeth vnto those lands or tenements by discent on the fathers side, or on the mothers side.

Also if there be three brethren & the middle brother purchaseth land in fee simple and dieth without issue, the elder brother shall haue the land by discent & not the ponger. Also if there be three brethren, and the yongest brother purchaseth land in fee simple, and dyeth without issue, the elder brother shall haue the land by descent, & not the middle brother, for that that the elder brother, is more worthy of blood.

And it is to be vnderstood, that no man shal haue land in fe simple by deſcēt as heire vnto

heire vnto the sonne, and not to the father (yet the father is more nigh of blood vnto the son) for that that there is a ground in the law, that inheritance may lineally descend, but not lineally ascend: yet if the son in such case dye without issue, & his Uncle entreth into the land as heire vnto the son (so as he ought by the law) and after if the Uncle decease without issue living the Father, then shal the Father haue the land as heir vnto the vncle, & not as heir vnto the son, for that that he commeth vnto the land by collaterall discent, & not by lineal ascention.

And in such case where the son purchaseth land in fee simple, and dieth without issue, they of his blood on the Fathers side shall inherit as heire vnto him, before any of the blood of the Mothers side. But if he haue no heire on the Fathers side, then shall the land descend vnto his heire on the mothers side. And this is the opinion of the Justices M. 12. E 4. fol 35. But there it was holden if any land descend vnto a man by the Fathers side which dieth without issue, that his next heire on the Fathers side shall inherit vnto him, that is to say, the next of blood of the father or the Graundfathers side. And for default of such an heire, they that be of the fathers blood of the part of the mother of the father (that is to say) the Graundmother ought to inherit. And if there be no such heire on the fathers side, then the Lord shall haue the land by Eschcate. And so it is if a mã take a wife inheritor in fee simple,

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Which hath iſſue a ſonne and dyeth, and the ſonne entreth into the tenemẽts as ſonne and heire vnto his mother, and after dyeth without iſſue, the heires on the mothers ſide ought to inherit the tenements, and not the heires on the fathers ſide.

And if there bee no heyres on the mothers ſide, then the Lord of whom the ſame land is holden, ſhall haue the ſame land by eſcheat. In the ſame manner it is if Lands deſcend vnto the ſon on the fathers ſide, which entreth, and after dieth without iſſue, the land ſhall deſcend vnto the heires on the fathers ſide, & not vnto the heires on the mothers ſide. And if there be none heires on the fathers ſide, then the Lord of whom the land is holden, ſhall haue ẏ ſame land by eſcheat. And ſo yee may ſee the diuerſitie, where the ſonne purchaſeth lands in fee ſimple, & where hee commeth vnto thoſe lands or tenements by diſcent on the fathers ſide, or on the mothers ſide.

Alſo if there be three brethren & the middle brother purchaſeth land in fee ſimple and dieth without iſſue, the elder brother ſhall haue the land by diſcent & not the ponger. Alſo if there be three brethren, and the pongeſt brother purchaſeth land in fee ſimple, and dyeth without iſſue, the elder brother ſhall haue the land by deſcent, & not the middle brother, for that that the elder brother, is more worthy of blood.

And it is to be vnderſtood, that no man ſhall haue land in fee ſimple by deſcẽt as heire vnto

any man, vnlesse hee be his heire of the whole bloud. For if a man haue issue two sonnes by two venters, and the elder purchaseth land in fee simple and dieth without issue, the ponger brother shal not haue the land, but the vncle of the elder brother, or some other his nigh cosin shall haue it, for that that the ponger is but of the halfe bloud to the elder brother. And if a man haue a sonne and a daughter by one venter, and a sonne by another venter, & the sonne by the first venter purchaseth Land in fee simple and dieth without issue, the sister shal haue the Land by discent as heir vnto her brother, and not the ponger brother, for that that the sister is of the whole blood to her elder brother.

And also where a man is seised of land in fee simple, and he hath issue a son and a daughter by one venter, and a sonne by another venter and dyeth, and the elder son entreth, and dyeth without issue, the daughter shal haue the land and not the ponger sonne, and yet is the ponger son heire vnto his father, but not vnto his brother. But if the elder sonne enter not into the land after the death of his father, but dieth before entrie be made by him, then the ponger brother may enter and haue the land as heire vnto his Father. But where the elder sonne in the case aforesaid, entreth after the death of his Father, and thereof haue possession, then the sister shal haue the land: Quia possessio fratris de feodo simplici, facit sororem esse hæred', For the possession of the brother in fee sim-

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gie maketh the sister to be heire.

But if there be two brethrē by diuers venters, and the elder is seised in fée simple and dieth without issue, and his vncle entreth as heire vnto him, which also dieth without issue, then the younger brother may haue ꝑ land as heire vnto his vncle, because he is of the whole bloud to him, though he be but of haife bloud vnto his elder brother.

And it is to bée vnderstood that this word (Inheritance) is not onely vnderstood where a man hath lands or tenements by discent of heritage: But also euery fée simple or fée taile that a man hath by his purchase, may be said inheritance, for that that his heires may inherite them. For in a writ of Right that a man bringeth of land, that was of his owne purchase, the writ shall say, Quam clamat esse ius & hæreditatem suam, that is to say, whiche hée claimeth to bee his right and his inheritance. And so it shall bee said in diuers other writs which a man or a woman bringeth of their owen purchase, as it appeareth by the register.

And of such things as a man may haue a manuall occupation, possession, or receite, as of lands, tenements, rents, and such other, a man shall say in his pleading, and way of barre, that one such was seised in his demesne as of fée. But of such things as lye not in manuall occupation &c. as of Aduowson of a Church, and such maner things: there he shal say, that he was seised as of fée, and not in his

demeine as of fee. And in Latin it is in ỹ same case said, Quod talis fuit seisitus in dominico suo vt de feodo, that is to say, That such a one was seised in his demeine as of fee, and in the other, Quod talis fuit seisitus vt de feodo, that is to say, that one such was seised as of fee.

And note well, that a man may not haue a more large ne greater estate of inheritance, then fee simple.

Also, purchase is called ỹ possession of lands or tenements that a man hath by his deed or by his agreement, vnto which possession he cõmeth, not by discent of any of his ancestors, or of his cosins, but by his owne deed.

Fee taile.

TEnant in fee taile, is by force of a statute of Westminster the second, capitulo primo: For at the cõmon law before the said statute, all inheritances were fee simple. For all the gifts which bin specified within the said statute, where fee simple cõditionally, as it appeareth by the rehearsall of the statute. And now by the same statute tenant in the taile is said in two maners, that is to say, tenant in taile generall, and tenant in tayle speciall.

Tenant in tayle generall, is where Lands or Tenements bee giuen to a man and to his heyres of his body begotten: In this case it is sayd generall tayle, for that that whatsoeuer woman that the tenant taketh to wife, if hee haue many wiues, and by each of them hath

issue,

tſſue, yet each one of theſe tſſues by poſſibilitie may inherit the tenements by force of the ſaid gift, becauſe that euery ſuch tſſue is of his bo-dy ingendred.

In the ſame manner it is where lands & tenements be giuen to a woman & to the heires comming out of her body, howbeit that ſhee haue many huſbãds, yet the tſſue that ſhe may haue by each huſband, may inherite as tſſue in the taile, by force of ſuch gifts. And therefore ſuch gifts been called generall taile.

Tenant in tayle ſpeciall, is where Landes and Tenements be giuen vnto a man and his wife, and the heires of their two bodies begot-ten. In ſuch caſe none may inherite by force of ſuch gift, but thoſe that bee ingendred be-tween them two, & it is called eſpeciall tayle, for that if the wife die, and he taketh another wife and hath tſſue, the tſſue of the ſecond wife ſhall neuer inherite by force of ſuch gift: Nor alſo the tſſue of the ſecond huſband if the firſt huſband die.

In the ſame manner it is, where lands and tenements bee giuen by a man vnto another with a wife, which is the daughter or couſin to the giuer, in Frankmariage, which gift hath inheritance by theſe words Frankma-riage) vnto it annexed, howbeit that it bee not expreſſly ſaid or rehearſed in the gift, that is to ſay, that theſe Woones ſhall haue theſe Landes or Tenements to them and to their heires betwixt them two ingendred, and that

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is said especiall taile for that the issue of the second wife may not inherit.

And note well, that this word Talliare, is to say, to set vnto some certaintie, or els limit vnto some certaine inheritance: And for that that it is limited & set in certaine, what issue shall inherite by force of such giftes, and how long that the inheritance shall indure: Therfore it is called in Latin, Feodum talliatum, i. hæreditas in quandã certitudinẽ limitata. For if tenant in generall taile die without issue, the donor or his heires shall enter as in their reuersion: In the same wise it is of the tenaunt in the taile special &c. For in euerie gift of the taile without more saying, the reuersion of fée simple is in the donour.

And the donées and their heires shall doe to the donour and to his heires such seruices as the donour doth vnto the Lord next aboue: Except the donées in frankmariage, which shall hold quietly from euery manner seruice, (vnlesse it be for Fealty) vntill the fourth degrée be past. And after that the fourth degrée is past, the issue in the fift degrée, and so forth the other issues after him, shall hold of the donor and of his heires as they hold ouer, as is afore said.

And the degrées in frankmariage shall bée accompted in such manner, that is to say, from the donour to the donées in frankmariage the first degrée, for that that the wife, that is one of the donées, ought to bee daughter, sister, or

other

other cosin to the donor: And from the donees vnto their issue shall bee accounted the second degree: And from their issue vnto their issue, the third degree, and so forth, &c.

And the cause is, for that after euery such gift, the issues that come of the donor, and the issues that come of the donees after the fourth degree past of both parties in such fourme to bee accounted, may betwixt them by the Law of holy Church intermarrie. And that the donee in frankmariage shall be the first degree of the foure degrees, a man may see in a plee vpon a writ of Right of Ward, Anno 31. Edwardi 3. where the plaintife pleadeth that his aiel or Grandfather was seised of certaine Lands, &c. And that hee held of another by Knights seruice, &c. which gaue the land vnto one Raufe Holland with his sister in frankmarriage, &c. And also these tailes beforesaid, be specified in the said statute of westminster the second.

And there bee diuers other estates in the tayle, howbeit that they bee not specified by expresse words in the said Estatute, but they be taken by the equitie of the Statute: As if Lands be giuen vnto a man and to his heires males of his bodie engendred, in such case his Heire male shall inherite, and the issue female shall neuer inherite: yet in these other tayles aforesaid it is otherwise. In the same manner it is if Lands be giuen to a man and to his heires females of his body ingendred.

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In this case his issue females shall inherite by force and forme of the said gift, and not the issue male, for that in such cases where the gift is who ought to inherite, and who not, the will of the donour shalbe observed.

And in case where Lands be given vnto a man & to his heires males issuing of his body, and hee hath issue two sonnes & deceaseth, the elder sonne entreth as heire male, & hath issue a daughter & deceaseth, his brother shall haue the land and not the daughter, for that the brother is heire male. But it shall be otherwise in these other tailes aforesaid, which been specified in the said Statute, the daughter shal inherit before the brother.

And if lands be given vnto a man, and to his heyres males of his body ingendred, and hee hath issue a daughter, which hath issue a sonne and deceaseth, and after that the Donee deceaseth: in this case the sonne of the daughter shall not inherit by force of the tayle, for that, whosoeuer shall inherite by force of a gift in the tayle made vnto the heyres males, behoueth to conuey his descent alway to the males, Mich. decimo octauo Edwardi tertij fol. 25. But in such case the donor shall enter, for that the Donee is dead without issue male in the Law. In so much that the issue of the daughter may not conuey to him the descent by heire male. And in the same maner it is where lands be given to a man and to his wife, and to his heires

males

males of their two bodies ingendzed.

Also, if Tenements be giuen to a man, and his wife, and to the heires of the bodie of the man ingendzed, in this case the husband hath estate in the generall taile, and the wife but estate for terme of life.

And if lands bee giuen to the husband and to the wife, and to the heires of the husband which he ingendzeth of the bodie of his wife: In this case the husband hath estate in the speciall taile, and the wife but for terme of life.

And if the gift be made to the husband and to the wife, and to the heires of the wife of her body by the husband ingendzed: then the wife hath estate in the speciall taile, and the husband but for terme of life. But if Lands be giuen to the husband and the wife, and to the heires that the husband ingendzeth on the body of the wife: In this case both haue estate in the taile, for that this word (heires) is limited no more to the one than to the other.

Also if Lands be giuen to a man and to his heires that hee ingendzeth on the body of his wife: In this case the husband hath estate in the taile speciall, and the wife nothing.

Also if a man haue issue a sonne, and deceaseth, and the land is giuen to the sonne, and to the heires of the body of his father ingendzed, this is a good taile, & yet the father was dead at the time of the gift.

Also

Also there be many other estates in the taile by the equitie of the said Estatute, that be not specified heere. But if a man giue Lands or Tenements to another, to haue and to hold to him and to his heires males, or to his heires females, hee to whom such gift is made hath fee simple, for that it is not limited by the gift of what body the issue male or female shal be, and so it may not in any thing bee taken by the equitie of the said Estatute, and therefore he hath Fee simple.

Tenant in taile after possibilitie of issue extinct.

TEnant in the taile after possibilitie of the issue extinct, is whereas Landes or Tenements be giuen vnto a man and to his wife in speciall taile, if one of them decease without issue, hee that suruiueth, is tenant in the tayle after possibilitie of issue extinct. And if they haue issue, during the life of the issue, hee that suruiueth, shall not bee said tenant in the tayle after possibilitie of issue extinct: yet if the issue decease without issue, so that there be none aliue that may inherit by force of the taile, then he that suruiueth of the donées is tenant in the tayle after possibilitie of issue extinct.

Also, if Landes bee giuen to a man and to his heires that be ingendred on the body of his wife. In this case the wife hath nought in the Tenements, and the husband is seised

as donee in speciall tayle. And in this case if the wife decease without issue of her body ingendred by her husband, then the husband is tenant in the taile after possibilitie of issue extinct.

And note well, that none may bee tenant in the tayle after possibilitie of issue extinct, but one of the donees, or the donee in speciall tayle, for the donor in general taile may neuer be said tenant in the taile after possibilitie of issue extinct, for that alway during his life, he may by possibility haue issue that may inherit by force of the same tayle. And so in the same manner the issue that is heire vnto the donees in a speciall tayle, may not be said tenant in taile after possibility &c. causa qua supra.

And tenant in tayle after possibility of issue extinct shall neuer be punished of wast, for the inheritance that once was in him, An. 10. Hen. 6. fol. 1. But hee in the reuersion may enter if he doth alien in fee, An. 45. E. 3. fol. 22.

Tenant by the Curtesie of England.

TEnaunt by the Curtesie of England, is where a man taketh a wife seised in fee simple, or in fee taile general, or as heire in the taile special, & hath issue by the same wife male or female borne aliue, the issue after beeing dead or aliue, if the wife decease the husband shal hold the same during his life by the Law of

of England, and this is called tenaunt by the Curteſie, for that it is not vſed in any other Realme but onely in England. And ſome ſay that he ſhal not be ſaid tenant by the curteſie, but if the childe that hee hath by his wife be heard cry, for by the cry is the proofe that the child that he had by his wife, was borne alive

Tenant in Dower.

TEnant in dower is, where a man is ſeiſed of certain lands or tenements in fee ſimple or in generall taile, or as heire in the taile ſpecial, and taketh a wife and deceaſeth, the wife after the deceaſe of her husbād ſhalbe indowed of the third part of ſuch lands or tenemēts that were her husbands any time during the couerture, to haue & to hold to the ſame wife in ſeueraltie, by mettes and bounds for terme of her life, whether ſhee haue by her husband iſſue or none, and of what age that the wife be, ſo that ſhe paſſe the age of nine yeares at the time of her husbands death, or els ſhe ſhal not be endowed.

And note well, that by the common law the wife ſhall not haue for her dower but the third part of the tenements, which were her husbands during the eſpouſels. By cuſtome of ſome Countrey ſhe ſhal haue the halfe: and by cuſtome of ſome Town, or Borough, ſhe ſhall haue the whole. And in all theſe caſes ſhe ſhal be ſaid tenant in Dower.

Alſo

Also there is two other maner of Dowers, that is to say, Dower called dowment at the Church doore, and Dower called dowment by the fathers assent. Dowment at the church doore, is where a man of full age is seised in fee simple which shal be wedded vnto a wife, when he commeth to the Church doore, and there after affiance and truth pleight made betweene them, endoweth his wife of his whole land, or of the halfe, or lesse parcell, and there openly declareth the quantitie, and the certaintie of his land that shee shall haue for her Dower: In this case the wife after the death of her husband shall enter into the sayd quantitie of land, of which her husband endowed her without the assignement of any man. Dowmēnt by ẏ fathers assent is, where the father is seised of Lands or tenements in Fee, and his sonne and heire apparent (when hee is wedded) endoweth his wife at the Church doore of parcell of the lands, or tenemēts of his fathers, by the assēt of his father, and assigneth the quantity of the parcels: In this case after the death of the sonne, the wife shall enter into the same parcell without the assignment of any other. But it hath bin said in this case, that it behooueth the wife to haue a deed of the father, prooving his assent and consent of such endowment. And if after the death of her husband shee enter and agree to any such dower of the said two dowers at the Church doore, then she is concluded to claime

any other Dower by the common law of any Lands or tenements, which were of the sayd husband. But if she will, she may refuse such dower at the Church doore, and then shee may be endowed after the course of the Common law. And note wel, that nó wife shalbe indowed of the fathers assent, in the forme aforesaid, saue where the husband is son and heire apparant to his father.

Inquire of these two cases of Endowement at the Church doze, &c. if the wife at the time of the death of her husband passe not the age of nine yeres, if she shall haue such dower or no.

And note well, that in all cases where the certaintie appeareth, what Landes or Tenements the wife shall haue for her Dower, the wife may enter after the death of her husband, without assignement of any other: But where the certaintie appeareth not, as to bee endowed of the third part, to haue in seuerall, or to bee endowed of the halfe after the custome to holde in seueraltie: In such cases it behoueth that her Dower bee vnto her assigned after the death of her husband, because it is not limitted before the assignement, what parts of Landes or Tenements she shall haue for her Dower. But if there be two Joyntenants of certaine Lands in Fee, and the one alieneth that that to him pertaineth and belongeth, to another in Fee, which taketh a wife and after dyeth: In this case

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the wife for her dower shall haue the third part of the halfe that her husband purchased, to holde in common, and occupie in common, as her part amounteth, with the heire of her husband, and with the other Joyntenaunt which alieued not, for that in such case her Dower may not bee assigned by meetes and bounds.

And it is to bee vnderstood, that the wife shall not bee endowed of lands or tenements that her husband iointly held with an other at the time of his death. But where he holdeth in common otherwise it is, as in the case aforesaid. And it is to wit, that if the Tenant in taile endow his wife at the Church doore as is aforesaid, that shall serue for little or nought to his wife, for that, that after the death of her husband the issue in the taile may enter vpon the possession of the wife, and so may he in reuersion if there be no issue in the taile aliue.

Also, if a man seised in Fee simple beeing within age, endow his wife at the Church doore, and dieth, and the wife entreth: In this case the heire of the husband may put her out. But otherwise it is as it seemeth where the father is seised in Fee, & the sonne within age endow his wife, of his fathers assent, the father then being of full age.

And there is another Dower which is called Dowment De la pluis beale: And that is in such case, that a man is seised of xl. acres

of land, and he holdeth xx. of the said xl. acres of one man by Knights seruice, and the other xx. acres of another in socage, and taketh a wife, and hath issue a sonne, and dyeth, his sonne being within the age of fourteene yeres, and the Lord, of whom the land is holden by Knights seruice, entreth into the xx. acres of Land holden of him, and them hath and occupyeth as Warden in Chiualrie during the childs nonage, and the childs mother entreth in the remnant, and it occupieth as garden or Warden in Socage: If in this case the wife bring a writ of Dower against the warden in Chiualry, to bee endowed of the tenements holden by Knights Seruice in the Kings Court, or in any other Court, the Garden in Chiualrie may plead in such case all the matter, and shew how the wife is warden in Socage, as is aforesaid, and pray that it may bee adiudged by the Court, that the wife endow her selfe of the most faire, called Pluis beale, of the tenements that she hath as Warden in socage, after the value of the third part that shee claimeth to haue of the tenements in Chiualrie by her Writ of Dower, and if the wife may not gainesay it, then the iudgement shall be made, that the wardē in Chiualry shal hold the lands holden of him during the nonage of the childe quite from the Woman, &c. And that the Woman may endowe her selfe of the most faire part of the lands that shee hath as Warden in Socage to the value of the third

part

part that the warden in chiualry hath &c.

And after such iudgement giuen, the wife may take her neighbors, and in their presence endow her selfe by meetes and bounds of the fairest part of the tenements that she hath as warden in Socage, to the value of the third part of the lãds that the warden in Chiualry hath, and that to haue and holde for terme of her life. And such Dower is called Dower of the fairest part, or De pluis beale.

With this agreeth P. 45. Edw. 3. fol. 4. But there it was said, that after the time that the heire comes to his full age, the wife shall haue a new action of Dower against the heire, to be endowed of the third part of all that the man died seised. And note well, that such dowment may not be, but where the iudgemẽt is giuen in the kings court, or in some other court. And the wife may do this for saluation of the estate of the warden in chiualry during the nonage of the child. And so yee may see fiue manner of dowers, that is to say, Dower by the common Law, Dower by custome, Dower at the Church dore, Dower of the Fathers assent, and Dower of the most faire. And remember that in euery case where a man taketh a wife seised of such estate of tenements &c. so that the issue that he hath by his wife may by possibilitie inherite the same tenements of such estate that the wife hath, as heire to the wife: In such case after the wife is dead, hee shall haue the same tenements by the Curtesie of Eng-

land and otherwise not.

And also in every case where ỹ wife taketh an husband seised of such estate of tenements, &c. so that by possibilitie it may happē the wife to have some issue by her husband, and that the same issue may by possibilitie inherit the same tenements of such estate that the husband had as heire to his father, of such Tenements she shall have her dower, and otherwise not. For if the tenements be given vnto a man and to his heires that he getteth on his wives body, in such case the wife hath nought in the tenements, and the husband hath estate but as dooree in special taile: Yet if the husband dy without issue, the same wife shalbe endowed o the same tenements, for that the issue that shee by possibilitie might have had by the same husband, may inherit the same tenements. But if the wife decease, living the husband, which after taketh another wife, the second wife shal not be endowed in this case. Causa qua supra.

A man was seised of certaine Lands, and tooke a wife, & after alienes the same Lands with warrantie, and after the feoffour and the feoffee died, & the wife of the feoffor bringeth an action of Dower against the issue of the feoffee, and hee vouched the heire of the feoffour, and during the voucher and not termined, the wife of the feoffee bringeth an action of dower against the heire of the feoffee, and demaundeth the third part of all that her husband was seised, and would not demaund

maund the third part of those two parts that her husband was seised, it was adiuged that shee should haue no iudgement vntill the time that the other plee were determined.

And also note that Vauisor saieth, that if a man be seised of lands, and commutteth Felonie, and alieneth, & after is attainted, the wife shal haue good action of dower against the Feoffee. But if it be escheated to the Lo. or vnto the lord, she shal haue no writ of dower. And so see the diuersitie, and inquire the cause.

Tenant for terme of life.

TEnant for terme of life is, where a man letteth lands or tenements to another for terme of life of the lesse, or for terme of life of another man: In such case the lesse is tenãt for terme of life. But by common language, hee that holdeth for terme of his owne life, is called tenant for terme of life, and hee that holdeth for terme of another mans life, is called Tenaunt for terme of another mans life, And it is to be vnderstood, that there is Feoffor and Feoffee, Donor and Donee, Lessour and Lessee. The Feoffor is properly where a man infeoffeth another in any lands or tenements in Fee simple, he that maketh ỹ Fessemẽt is called the Feoffor, and he to whom the Fessement is made, is called the Feoffee. And the donour is properly, where a man giueth certaine Lands or Tenements to another in

the taile, he that maketh the gift is called donor, and he to whom the gift is made is called donee. And lessour is properly where a man letteth to another certaine lands or tenements for terme of life, for terme of yeres or to hold at will, hee that maketh the Lease is called lessour, and hee to whom the lease is made is called lessee, and every one that hath estate in Lands or Tenements for terme of his owne life, or for term of another mans life, is called Tenaunt of freehold. And none of lesse estate may haue freehold, but they of greater estate may haue freehold, for tenaunt in fee simple hath freehold, and tenant in the tayle hath also freehold.

Tenant for terme of yeares.

TEnant for terme of yeres is, where a man letteth Lands or tenements to another for terme of certaine yeres after the number of yeares that is accorded betwen the lessor and the lessee, and when the lessee entreth by force of the lease, then is he tenãt for term of yeres, and if the lessour in such case reserue to him a yearely rent vpon such lease, hee may chuse for to distraine for the rent in the tenements letten, or else hee may haue Action of debt for the arrerages against the lessee. But in such case it behoueth that the lessour bee seised in the same tenements at the time of his lease, for

it is a good plea for the lessee to say, that the lessor had nothing in the tenemẽts at the time of the leale, except the leale be made by deed indented, in which case then such plea lyeth not for the lessee to plead.

And it is to be understood, that in a Lease for terme of yeares, by deed or without deed, it needeth no liuerie of seisin to bee made to the lessee, but he may enter whensoeuer he will by force of the same Lease. But of feoffements made in the Countrie or gifts in the taile, or Leases for terme of life, in such cases where freehold shall passe, if it be by deed or without deed, it behoueth to haue liuerie of seisin &c. But if a man let Lands or tenements by deed or without deede for terme of yeares, the remainder ouer to another for terme of life, or in the taile, or in fee, then in such case it behoueth that the lessor make liuery of seisin to the lessee for terme of yeares, or else there shall nothing passe to them in the remainder, though the lessee enter in the tenemẽts. And if the termor in such case enter before any such liuery of seisin made vnto him, then is the freehold and the reuersion in the lessor. But if he make any liuery of seisin vnto the lessee, then is the freehold with the fee to them in the remainder after the forme of the graunt, and will of the lessor.

And if a man will make a feoffement by deede or without deede, of Landes or Tenements that he hath in many Townes in one Shire, if the liuery of seisin bee made in one par-

parcell of the tenements in one Towne in the name of all, it sufficeth for all the other lands or tenements comprehended in the same feffement, in all other townes in the same Shire. But if a mã make a deed of feffement of lands or tenements in diuers shires, there it behoueth him to haue in euery shire a liuery of seisin. And in some case a man shall haue by the graunt of another for simple, for taile, or freehold, without liuery of seisin. As if two men be, and each of them is seised of a quantitie of land within one shire, & the one graunteth his land to the other in exchãge for that land that the other hath, & in the same manner the other graunteth his land vnto the first grantor in exchange for the lãd that the first grantor hath: In this case each may enter in ꝑ others lãds to take in exchange, without any liuery of seisin. And such exchange made by words, of tenements within the same Shire without any writing, is good enough. And if the Lands or tenements be in diuers shires, that is to say, if that ꝑ one haue in one shire, & ꝑ the other haue in another shire, it behoueth to haue a deed indented made between them of such exchange.

And note, that in exchanges it behoueth that the estates that both parties haue in the lands so exchanged, be equal: For if the one willeth & granteth that the other shal haue his lãd in the taile, for the land that he hath of the graunt of the other in fee simple, though the other agree to that, yet this exchange is but void, for

that

that the estates be not euen.

In the same maner it is where it is granted and agreed betwixt them, that the one shall haue in the one Land fee taile, & the other shall haue in the other Land but terme of life. Or if one shall haue in the one Land fee taile generall, and the other in the other Land fee taile especiall &c. So alway it behoueth that in exchange the estate of both parties be euen, that is to say, if the one haue fee simple in the one Land, that the other shall haue such estate in the other land, and if the one haue fee taile in the one land, then the other shall haue likewise in the other Land. Et sic de aliis statibus. But it is nothing to charge of the euen value of the lands, for though that the land of the one is so much more in value than the land of the other, this is nothing to the purpose, so that the estates made by the exchange be euen, & in exchange be two graunts, for euery party graunteth his Land to the other in exchange, and in each of their graunts mention shalbe made of the exchange.

And if a man let land to another for terme of yeres, though the lessor die before the lessee enter into the tenements, yet may hee enter into the tenements after the death of the lessor, for that that the lesse by force of the lease hath right incontinent to haue the tenements after the fourme of the Lease. But if a man make a deed of feoffement vnto another, and a letter of attourney to a man to deliuer to him seisin

ſeiſin by force of the ſame deed, yet if the liuery of ſeiſin bee not, made in the life of him that made the deede, it auayleth not for that the other hath no maner of right to haue the tenements after the purport of the deed before the liuerie of ſeiſin &c. And if no liuery be made, then after the death of him that made the deed, the right of ſuch tenemẽts is incontinently in his heire, or in ſome other. Alſo if tenements be let to a man for terme of halfe a yeare, or for terme of a quarter of a yeare &c. In ſuch caſe, if the leſſee make waſt, the leſſor ſhall haue againſt him a writ of Waſt, and the writ ſhall ſay, Quod tenet ad terminum annorum. But her ſhall haue a ſpeciall declaration vpon the truth of this matter, and the plea ſhal not abate the writ, for that that hee may haue no other writ vpon the matter. Aſſ 7. H. 7. fol. 1.

Tenant at will.

TEnãt at will is, where Lands or Tenements bee letten by a man vnto another, To haue and to hold to him at the will of the leſſour, by force of which leaſe the leſſee is in poſſeſſion: In ſuch caſe the leſſee is called tenant at will, for that hee hath no certaine nor ſure eſtate, for the leſſour may put him out at what time it pleaſeth him: yet if the leſſee ſow the land, & the leſſor (after the ſowing and before that his graines be ripe) put him out, yet ſhal the leſſee haue his graines, and ſhall haue free egreſſe and regreſſe to reape and to carrie his

his graynes, for that he wist not at what time his lessour would enter vpon him. Otherwise it is if tenant for terme of yeres before the end of his terme soweth the Land, and the terme end before that his graines be ripe: In this case the lessor, or he in the reuersion shall haue the graines, for that the termor knew well the certaintie of his terme, and when his terme should be ended.

Also, if a house bee let to a man to hold at will, by force of which the lessee entreth into the house, within which house he bringeth his houshold stuffe, and after the lessour putteth him out, yet shall he haue free entrie, egresse, and regresse in the same house by reasonable time to carrie his goods and houshold stuffe. And if a man be seised of a house in fee simple, fee taile, or for term of life, the which hath certain goods within the same house, and maketh his executors and deceaseth, whosoeuer after his death hath the house, yet shal his executors haue free entrie, egresse, and regresse to carrie out of the house the goods of the testator by a reasonable time.

Also, if a man make a deed of Feoffement vnto another of certaine land, and deliuereth to him the deed, but no liuerie of seisin: In this case hee to whom the deed is made may enter into the Land, and hold and occupie it at the will of him that made the deed, for that that is is proued by the words of the deed, that it is his will that the other shal haue the land. But

hee

he that made the deede, may put him out when he will.

Also if an house be let to hold at will, the lessee is not holden to sustaine or repaire the house, as tenant for terme of yeares is holden to doe. But if the lessee at will make voluntary Waste, as in pulling downe of houses, or in cutting or felling of trees: It is said that the lessor shall have for that against him an action of Trespas. So if I deliuer to a man my sheepe to dung or manure his land, or mine oxen to eare his land, and he slayeth the beastes, I may well haue an action of Trespasse against him notwithstanding the deliuery.

Also if the lessour vpon such lease at will reserue vnto him a yerely rent, he may distraine for the rent behind, or haue for that an action of Dedt at his owne choise, Hill. 6. Rich. 2. in a Repleuin.

Tenant by Copie of Court Roll.

TEnant by Copie of Court Roll is, as if a man bee seised of a Mannor, within which Mannor there is a custome, & hath beene vsed in time out of minde, that certaine Tenants within the same Mannour haue vsed to haue Lands or Tenements, to hold to them and to their heires in Fee simple, or in Fee taile, or for terme of life, &c. at the will of the Lord, after the custome of the same Manor: and such a tenant may not alien the land by deed, for then the

the lord may enter as in a thing forfeit to him. But if hee will alien his land to another, him behoueth after some custome to surrender the tenements in some Court, &c. into the Lords handes, to the vse of him that shall haue the estate, in such forme, or to such effect.

Ad hanc Curiam venit A. de B. & sursum reddidit in eadem Curia, vnum messuagium &c. in manus domini, ad vsum E. de A. & hæredum suorum, vel hæredum de corpore suo exeunt vel pro termino vitę suæ &c. Et super hoc venit prædictus E. de A. & cepit de domino in eadem Curia messuagium prædictum &c. Habendum & tenendum sibi & hęredibus suis, vel sibi & hæredibus de corpore suo exeuntibus, vel sibi ad terminum vitæ suæ, ad voluntatem domini, secundum consuetudinem manerii, faciend' & reddend' inde redditus debit', seruitia, & consuetudines inde prius debita, & de iure consueta, Et dat domino de fine, &c. Et fecit domino fidelitatem &c. That is to say, A. of B. commeth vnto this Court, and surrendreth in the same court a messe &c. into the hands of the Lord, to the vse of E. of A. and his heires, or the heires issuing of his bodie, or for terme of life, &c. And vpon that, commeth the foresaid E. of A. and taketh of the Lord in the same court; the foresaid messe &c. To haue and to hold to him and to his heires, or to him and to his heires issuing of his body, or to him for terme of life, at the Lords will, after the custome of the manor to do and yeild there-

therefore rents, debts, ſeruices, and cuſtomes thereof before due and accuſtomed &c. and giueth the Lord for a fine &c. and maketh vnto the Lord his fealtie, &c. And ſuch tenants be called tenants by Copie of Court Rolle, for that they haue no other euidences concerning their tenements, but the Copies of the Court Rolles: And ſuch Tenants ſhall not implead nor be impleaded for their Tenements by the Kings writ. But if they will implead other for their Tenements, they ſhall haue a plaint made in the Court of the Lord in ſuch forme, or to ſuch effect. A. de B. queritur verſus C. de D. in placito terræ, videlicet, de vno meſuagio, quadraginta actis terr', quatuor actis prati, &c. cum pertinentijs. Et facit poteſtationem ſequi querelam iſtam in natura breuis Domini Regis Aſſiſæ mortis anteceſſoris ad communem Legem, vel breuis Domini Regis Aſſiſæ nouæ diſſeiſ. ad communem Legem. That is to ſay, A. of B. complaineth againſt C. of D. of a piece of Land: That is to ſay, of a meaſe, and foure acres of Land, foure acres of meadow, &c. with the appurtenances. And maketh proteſtation to ſue his plaint in nature of the Kings writ of Aſſiſe of the death of his anceſtor at the common Law, or by a writ of our Soueraign Lord the King, of Aſſiſe of nouel diſſeiſin at the Common Law, or in nature of ſome other writ &c. pledges to proſecute, *I. G.* &c. And though that ſome ſuch tenaunts haue inheritance after the cuſtome of the maner, yet

they

they haue none estate but at the Lords will, and after the course of the Common Law, for it is said, if the Lord put them out, they haue no other remedy but to sue vnto the Lord by petition: For if they had any other remedie they should not be said tenants at the Lordes will, after the custome of the Mannor, but the Lord will not breake the custome that is reasonable in such cases. But Brian chief Justice saith, that his opinion hath alwaies been, and alwayes shall bee, if such a tenant by custome (paying his services) be cast out by the Lord, he shall haue an action of trespas against him, H. 2. E. 4. fol. 8. And likewise was the opinion of Danby chiefe Iustice M. 7. E. 4. fol. 19. for hee saith that the tenant by the custome, is as well inheritable to haue the land after the custome, as wel as he that hath Frankstenement by the common Law.

TEnants by the Pard, bee in such nature as tenants by Copie of Court Roll: But the cause for which they be called tenaunts by the Rodde, or Parde, is, for that when they will surrender their Tenements into the Lordes hand, to the vse of another, they shall haue a little pard or rodde by the custome and vse, in their handes, which they shall deliuer vnto the Steward or Baylife, after the Custome and vse of the mannor, and hee that shall haue the land, shall take the same land in the Court, and his taking shall bee entred in the Rolle. And the Steward, or the bailife, according to

the custome, shall deliuer vnto him, that taketh the Land, the same yard or another yard in the name of seisin. And for this cause they be called Tenants by the Yard. But they haue none other euidence but Copie of the Court Roll.

And also in diuers Lordships and Mannors there is such a custome, if such a tenant that holdeth by the Custome will alien his Lands or Tenements, he may surrender his lands vnto the Bayliffe, or to the Reeue, or to iij. honest men of the same Lordship, to the vse of him that shall haue the land, to haue in Fée simple, Fée taile, or for terme of life, &c. and all that shall be presented at the next Court. And then hee that shall haue the Land by Copie of Court Roll, shall haue the same land after the intent of the surrender. And it is to wit, that in diuers lordships, and diuers manors, there be made diuers Customes in such cases, as to take tenemẽts, and as to plead, & as touching other things and customes to bee done, and all that, that is not against reason, may well bee admitted and allowed. And such tenants that hold after the custome of a Seigniory, or after the custom of a manor, though they haue estate of inheritance after the custome of ꝑ lordship, or of the manor, yet because they haue not any freehold by the course of the common law, they be called tenants of base tenure.

And diuers diuersities there bee betweene a tenant at will, which is in by the lease of his lesso;

lessor by the course of the common Law, and tenant after the custome of the mannor in the fourme aforesaid. For tenant at will after the custome may haue estate of inheritaunce, as it is aforesaid at the lords will after the custome and vsage of the Mannor: But if a man haue lands or tenements which be not within such Manor or Lordship where such custome hath been vsed in the fourme aforesaid, and will let such Lands or tenements to another, to haue and to hold to him and to his heires at the will of his Lessor, these words, to the heires of the Lessor be void, for this is the cause, if the lessor dye, and his heire enter, the lessor shall haue a good action of Trespas against him, but not so against the heire of the tenant by the custome in any case &c for that the custome of the Mannour in some case may helpe him to barre his Lord in an action of Trespas.

Also Tenant by the custome in some places ought to repaire and sustaine the houses, and the other Tenant at will ought not. Also one by the custome shall doe Fealtie, and the other not. And diuers other diuersities there bee betweene them

Thus endeth the first Booke.

Homage.

HOmage is the most honourable seruice and most humble seruice of reuerence that a Franktenaunt may doe to his Lord: For when the Tenaunt shall make Homage to his Lord, hee shall bee vngirt, and his head vncouered, and his Lord shall sit, and the Tenaunt shall kneele before him on both his knees, and hold his handes toyntly together betweene the handes of his Lord, and shall say thus: I become your man from this day forward of life and limme, and of earthly worship, and vnto you shalbe true and faithful, and beare you faith for the tenements that I claime to hold of you, (saving the faith that I owe vnto our Soueraigne Lord the King.) And then the Lord so sitting shall kisse him.

But if an Abbot, or Priour, or any other man of religion shall make homage vnto his Lord, hee shall not say, I become your man, for that he hath professed himselfe onely to bee Gods man: But hee shall say thus, I doe you homage, and vnto you shall be true and faithfull, and beare you Faith for the Tenements that I claime to holde of you: Saving the faith that I owe vnto our Soueraigne Lord the King.

Also, if a Woman sole shall make Homage vnto the Lord, shee shall not say, I become your Woman, for that is not conuenient for a woman to say, that shee shall become a woman to any but onely to her Husband

band when she is wedded, But she shall say, I make vnto you Homage, and to you shal be true and faithfull, and shall beare you faith for the tenements that I hold of you, sauing the faith that I owe to our Soueraign Lord the King.

But if a man haue seuerall tenancies which he holdeth of seuerall Lords, that is to say, euery tenancie by Homage: Then when hee maketh Homage vnto one of his Lords, hee shall say in the end of his Homage, Sauing the faith that I owe vnto the King, and vnto my other Lords.

And note well, that none make Homage, but such as haue estate in Fée simple, or in Fée taile in his owne right, or in any other mans right: For it is a ground in the law, that he that hath estate but for terme of life, shal make none homage, nor take none homage.

For if a woman haue landes or tenements in Fée simple, or in fée taile, which she holdeth of her Lord by Homage, and taketh an husband, and hath issue, then the husband in the life of the wife shall make homage, for that hee hath title to haue the land by the curtesie, if he surmiue his wife: And also he holdeth in the right of his wife. But afore issue betweene them, the Homage shall be made in both their names: But if the wife decease before homage made by the husband in the wiues life, and the husband holdeth himselfe in as tenant by the curtesie, he shall make no Homage vnto

his Lord, for that he hath then none estate but for terme of life. More shall be said of homage in the tenure of homage auncestrell.

Fealty.

FEaltie is as much to say, as Fidelitas in Latin: and when a franketenant shal make Fealty vnto the Lord, he shall hold his right hand vpon a booke, and shall say thus:

Heare you this my Lord, that I vnto you shall be faithfull and true, and beare you faith for the lands and tenements, that I claime to hold of you, and truely to you shall do the customes and services that I ought to doe vnto you at termes assigned, as God me helpe & all his Saints, & then he kisseth the booke: But he shall not kneele when he maketh his fealty, nor shall make such humble reuerence, as is aforesaid in Homage. And great diuersitie there is had betweene making of Fealty, and of Homage: For Homage may not bee made but to the Lord himselfe. But the Steward of the Lords Court, or the Bayliffe may take Fealty for the Lord.

Also tenant for terme of life shall make Fealty, and yet he shall make none Homage. And diuers other diuersities there be betweene homage and Fealtie.

Also a man may see a good note, Anno 15. Edw. 3. where and how a man and his wife made Homage & Fealty in the common bank, which is written in such fourme, Note that

John

John Lewknor & Elizabeth his wife made homage vnto William Thorpe in this manner: The one and the other held iointly their hands betweene the hãds of William Thorpe, and the husband said in this wise: Wee vnto you make homage, and beare you faith for the lands that we hold of B. your counsor, which hath granted your services in B. and in C: and the other townes &c. against all men (saving the faith that wee owe vnto our Soueraigne Lord the King, and to his heirs, and to our other Lords) and the one and the other kissed him. And after they made Fealty, and the one & the other held their hands together vpon a a booke, & the husband said the words, and both kissed the booke. More shall bee said of Fealtie in the tenure of Socage, and in the tenure of Frankalmoigne, and in the tenure of Homage auncestrell.

Escuage.

Escuage is called in Latin Scutagium, that is to say, service of shield. And such a tenant that holdeth his land by Escuage, holdeth by knights service. And also it is commonly said, that some hold by a Fée of knights service, & some by ꝑ halfe Fée of knights service &c. And it is said, that when the K. maketh a voyage royal into Scotland for to subdue the Scots, he that holdeth by a Fée of knights service, behoueth to be with the King by forty daies, well & conuenably arreyed for the war. And

likewise hee that holdeth his land by the halfe of a fee by Knights seruice, ought to bee with the king by 20. dayes. And he that holdeth his Land by the fourth part of a fee by Knights seruice, him behoueth to be with the King by ten dayes, and so after the quantity, hee that hath more, to doe more, and he that hath lesse, to doe lesse.

But it appeareth by the pleas & arguments made in a good plee vpon a writ of Detinue of an Obligation, brought by one Henry Gray, An 7. E. 3. fol 29. that it nedeth not to him that holdeth by Escuage to goe himselfe, if he will find an able person for the warr conuenably arrayed for the warre, to go with the king, and that seemeth good reason: for it may be, that he that holdeth by such seruice is sicke, in such wise that he may not go nor ride.

And also an Abbot, or any other man of religion, or a woman sole that holdeth by such seruice, ought not in such case to goe in proper person. And sir William Herle that time chiefe Iustice of the common Place said in the said Plee, that Escuage shall not be graunted, but where the king himselfe goeth in proper person. And so it abode in iudgement of the same plee, if these 21. daies shall bee accompted from the day of the Muster of the kings host made by the commons and the kings commaundement: Or els from the day that the king first entreth into Scotland &c. therefore inquire of this matter.

And

And after such voyage into Scotland it is commonly said, that by the authority of Parliament, the Escuage shalbe set and put in certaine: that is to say, a certaine sum of money how much every one that holdeth by a whole fee of Knights service, which was not in his owne proper person, nor none other for him with the King, shall pay unto the Lord, of whom he holdeth his land by escuage. As put case that it was ordained by authoritie of parliament, that every one that holdeth by a whole fee by Knights service, which was not with the King shall pay to his Lord xl.s. That hee that holdeth by the halfe of a fee by Knights service, shall pay unto his Lord but xx.s. and so who more, more, and who lesse, lesse. And some tenants hold, that if Escuage runne by authoritie of parliament to any summe of money, that they shall pay but the halfe of that summe, and some but the fourth part of that summe. But because the Escuage that they shall pay is not certaine, for that it is at no certaine what the Parliament will assesse the Escuage, they hold by Knights service. But otherwise it is of Escuage certaine, of which shalbe spoken of in the tenure of Socage.

And if a man speake generally of Escuage, it shall be understood by the common speech of Escuage not certaine, which is Knights service: And such Escuage draweth unto him Homage, and Homage draweth unto him Fealtie, for Fealty is incident to every manor of

service

seruice, but to the tenure of frankalmoigne, as it shalbe said hereafter in the tenure of frankalmoigne: So as he that holdeth by Escuage holdeth by Homage, Fealty, and Escuage.

And it is to bee vnderstood, that when Escuage is so sessed by authoritie of parliament, euery lord to whom the land is holden by Escuage, shall haue the Escuage so sessed by the Parliament, because it is vnderstood by the law, that at the beginning such Tenements were giuen by the Lords to hold by such services to defend their Lords as well as the king, and to set in quiet and rest their Lords against the king of Scots aforesaid. And for that such tenements came first of the Lords, it is reason that they haue the escuage of their tenants.

And the Lords in such case may distraine for the Escuage so assessed, or they may haue the kings Writs, directed vnto the Sheriefs of the Shire, to leuy such Escuage for them, as it appeareth by the Register fol. 88.

But if such tenants that hold of the king by Escuage, which were not with the king in Scotland, the king himselfe shall haue the escuage.

Item, in such case aforesaide, where the king maketh a voyage royall into Scotland, and the Escuage is assessed by Parliament, if the Lord distraine his tenant that holdeth of him by seruice of a whole Knights Fee, for the Escuage so assessed &c. and the tenant pleadeth

and

and will auerre that he was with the king in Scotland &c. by 40. daies, and the Lord will auerre the contrary, it is said that it shall be tried by the certification of the Marshal of the Kings host in writing vnder his seale, which shalbe sent to the Justices.

Homage, Escuage, and Fealtie.

TEnure by Homage, Escuage, and Fealty, is to hold by knights seruice, and it draweth vnto it Ward, Mariage, and relieue: For when such a tenant dieth, his heire male being within the age of 21. yeares, the Lord shall haue the Land holden of him vnto the age of the heire of 21. yeares, which is called ful age, for that such an heire by the vnderstanding of the law, is not able to do knights seruice before the age of 21. yeres.

And also if such an heire be not married at the time of the death of his auncestor, then the Lord shall haue the ward and marriage of him. But if such a Tenant die his heire female being of the age of fourteene yeares or more, then the Lord shall not haue the ward neither of the Land nor of the bodie, for that a woman of such age may haue a husband able to doe Knights seruice. But if such an heire female bee within the age of fourteene yeres and not married at the time of the death of her auncestor, then the lord shall haue the

ward

ward of the Lands holden of him, till the age of such an heire female of 16. yeares: For that it is given by the statute of Westmin 1. cap. 22. that by two yeares next following the said 14 yeares, the Lord may tender a convenient mariage without disparaging of such an heire female. And if the Lord do not tender her such mariage within the said two yeares, then shee at the end of the said two yeares may enter and put out the Lord. But if such an heire female bee married within the age of 14. yeares in the life of the auncestor, and the auncestor die, she being within the age of 14. yeares, the Lord shall have but the ward of the land, till an end of 14. yeares of age of such an heire female: And then her husband and shee may enter into the land & put out the Lord, for this is out of the case of the Statute: Insomuch that the Lord cannot tender marriage to her that is married &c. For before the said statute of Westm 1. such issue female that was within age of 14. yeares at the time of the death of her auncestor, and after that shee had accomplished the age of foureteene yeres without any tender of marriage to her by the Lord, such an heire female then might enter into the Land, and put out the Lord, as appeareth by the reherfall, and by the words of the same Estatute: So that the said Statute was made in such case all for the advauntage of the Lord as it seemeth. But yet that at all times it is understood by the wordes of the

same

ſame Statute, that the Lord ſhall not haue the ij. peare after the xiij. peare, as is afore-ſaid.

And note well, that the full age of the male and female after the commō ſpæch is ſaid the age of 21. And the age of diſcretion is ſaid the age of 14. peeres, for a child at ſuch age, which is wedded within ſuch age to a woman, may agree to the marriage or diſagree.

And if the warden in chiualry marry once his ward within the age of 14. peares, and after the age of 14 peares hee diſagreeth to the marriage. It is ſayd by ſome folke that the childe is not holden by the Lawe to bee married an other time by his warden, for that the warden had once the marriage of him, and therefore he was out of his ward, as concerning the ward of his body. And when he had once the mariage of him, and therefore was out of his ward, hee ſhall no more haue the marriage of him. In the ſame manner it is, if the warden marry him, and the wife die, the childe being within age of 14. peeres, or 21. peares. And that the childe may diſagree to ſuch mariage when hee commeth to the age of 14. peares, it is proued by the words of the Statute of Merton cap. 6. that ſaith thus: De dominis qui maritauerint illos quos habent in cuſtodia ſua, villanis, & alijs, ſicut burgenſibus vbi diſparagentur, ſi tales homines fuerint infra 14. annos, & talis ætatis quod matrimonio conſentire non poſſint, tunc ſi parentes

rentes illius conquerant', dominus ille amittat custodiam illam vsque ad ætatem hæredis. Et omne commodū quod inde recepſ fuerit conuertatur in commodum hæredis infra ætatem exiſtentis, ſecundum diſpoſitionem parentum, propter dedecus ei impoſitum. Si autem fuerit 14. annorum & vltra quod conſentire poterit, & tali maritagio cōſenſerit, nulla ſequatur pœna. And ſo it is prouided by the ſame Statute that no diſparagement ſhall be, but where that hee that hath the Ward marrieth him within the age of 14. yeeres.

Alſo it hath bin a queſtion how theſe words ſhould be vnderſtood: Si parentes conquerantur, &c. And it ſeemeth vnto ſome, that conſidering the ſtatute of Magna charta cap. 6. that willeth, that hæredes maritentur abſque diſparagatione, &c. vpon which the ſaid Statute of Merton vpon this poynt is grounded, as it ſeemeth, and in ſo much as it was neuer ſeene that any action was brought vpon the ſtatute of Merton for ſuch diſparaging againſt the Warden, and if an Action may be taken vpon ſuch matter, it ſhall bee taken by common preſumption before this time, or at ſome time to be put in vre, that theſe wordes ſhall bee vnderſtood in ſuch manner, Si parentes conquerantur, i. Si parentes inter ſe lamentantur, which is as much as to ſay, that if the Couſins of ſuch a childe haue cauſe to make lamentation and complaint amongſt them for the ſhame done to their couſin ſo diſparaged,

which

which is in a manner a shame to them all, then may the next cosin to whom the heritage may not descend enter, and put out the Warden in Chiualry. And if he will not, another cosin of the childs may doe it, and he to take the issues and profits vnto the vse of the child, & of that paid the child account when he commeth vnto his full age: Or else the child within age may enter himselfe, and put out the Warden, &c. Sed quære de hoc.

Also there are many other kinds of disparagings, which bee not specified in the same Statute: As if the heire that is in ward be married vnto one that hath but one foote, or one hand, or else deformed, or lame, or hauing an horrible disease, or else a great & continuall infirmitie: Or if the heire male be maried to a woman past child bearing. And many other causes of disparaging there be, but inquire for them, for it is a good matter to learne. And of heires males that bee within age of one and twentie yeeres after the death of their ancestors vnmarried: In such case the Lord shall haue the marriage of such an heire, and haue space and time to tender to him cõuenable marriage without disparaging within the same time of 21. yeares.

And it is to wit, that the Heire in such case may chuse if hee will bee married or no. But if the Lord which is called Warden in Chiualrie, tender a cõuenable marriage to such an heire within the age of one and twen-

tie

tie 8 one yeares, without disparaging, and the heire refuse, and marry not himselfe within the same age: Then the said Warden shall haue the value of the marriage of such an heire. But if such an heire male marrie himselfe within the age of 21. yeares, against the will of the warden in chiualry, then shall the Warden haue double the value of the marriage, by force of the Statute of Merton aforesaid, as in the same Statute is more fully comprised.

And diuers tenants hold of their Lords by Knights seruice, & yet they hold not by Escuage, nor pay no Escuage, as they that hold their land by castle ward, that is to say, to keep a Tower of a castle, or a gaole, or some other place by reasonable warning, whē their lords heare tell that enemies will come, or bee come into England. And in many other cases a man may hold by Knights seruice, & yet he holdeth not by Escuage, nor payeth no Escuage, as shalbe said in the tenure of Grand Sergeanty. But in all cases where a man holdeth by Knights seruice, such seruices drawe to the Lord, Ward, and marriage.

And if a tenant that holdeth of his Lord by seruice of an whole Knights fee die, his heire being of full age of one and twenty yeres, his heire shal pay vnto the Lord C s. for a reliefe. And he that holdeth by the halfe Fee shall pay L. s.

Also if a man hold his Land of the Lord by the seruice of two Knights Fees, then the

heire

heire at full age at the time of the death of his auncestor, shall pay to his Lord ten pound for reliefe.

Also, if there bee grandfather, mother, and sonne, and the mother dyeth living the father of the sonne, and after the grandfather which held his land by Knights seruice dyeth seised, and the land descendeth to the sonne of the mother, as heire to the Grandfather, which is within age: In such case the Lord shall haue the ward of the land, but not the ward of the heire: For that none shalbe in ward of his body living his father, because the father during his life shall haue the marriage of his heire apparant, and not the Lord. Otherwise it is if the father bee dead living the mother, where the land holden in Chiualry descendeth to the sonne on the fathers side, &c.

Also if a man be seised of land which is holden by Knights seruice, and maketh a feoffement in Fee to his vse, and dyeth seysed of the vse, his heire within age, and no will by him declared, the Lord shall haue a writ of Right, of the body and the land, like as if the tenant had died seised of the demeine. And if the heire bee of full age at the death of his auncestor, in such a case he shall pay reliefe, like as if he had been seised of a demeine, and that is by the Statute of An. 4. H. 7. cap. 17.

Also there is a warden in right in chiualry, and a warden in deed in chiualry: Warden in right in chiualrie, is where the Lord because

of his Lordshippe is seised of the Ward of the Land, and the heire vt supra. Warden in deed in Chiualrie, is where the Lord in such case after his seising graunteth by deed, or without deed, the Ward of the land, or of the heire, or of both to another man, by force of which graunt the grauntee is in possession, then is the graunee called Warden in deed &c.

Tenure In Socage.

TEnure in Socage, is where the Tenaunt holdeth of his Lord the tenancie by certaine seruice for all maner of seruices, so that the seruice be not Knights seruice: As where a man holdeth his land of his Lord by Fealty and certaine rent for all maner of seruices: or else where a man holdeth his land by homage, Fealty, and certaine rent, for all manner of seruices, for Homage by it selfe maketh not Knights seruice.

Also a man may hold of his Lord onely by Fealty, & such tenure is Tenure in Socage, for euery tenure that is not tenure in Chiualrie, is tenure in Socage. And it is said, that the cause wherefore such tenure is said, & hath the name of tenure in Socage, is this: Quia hoc Socag. idem est, quod seruic' Socæ, Et hæc Soca Socæ, idem est quod Caruca, s. one Sobe, or one plough land.

And in olde time before the limitation of

of time out of mind, great part of the tenants that held of their Lordes by Socage, ought to come with their Ploughes, euery of the said tenants by certaine dayes in the yeare, to eyze and sowe the Lords landes of his owne greines: But for that such workes were done for the liuelode and sustenance of their Lords, they were acquited against their Lord of all manner of seruices. And for this, that such seruice was done with their Ploughes, such tenure was called Tenure in Socage. And after that such seruices were chaunged into diuers other maner seruices, by consent of the tenants, and by the desire of their Lords, that is to say, into a yearely rent, &c. But yet the name of Socage abideth, and in diuers places Tenaunts yet doe such seruice with their Ploughes vnto their Lord, so that all manner of seruices that bee not Tenures in Knights seruice, bee called Tenures in Socage.

Also if a man hold of his Lord by Escuage certaine, That is to say, in such fourme, that when Escuage runneth and is assessed by the Parliament to a more summe, or to a lesse summe, that the Tenant shall pay to the Lord but halfe a marke for escuage, & neither more ne lesse, for how great summe, or little summe that the escuage runneth, in this case because the escuage is certaine before that any escuage is assessed, &c. such tenure is tenure in Socage, & not Knights seruice. But where the

summe that the tenant shall pay for Eschage, is not certaine, that is to say, where it may be that the summe that the tenant shal pay for eschage may bee at one time more, and an other lesse, after that it is assessed, &c. then such tenure is tenure by Knights service.

Also if a man holde his land for to pay certaine Rent to his Lord for Castlegard, such tenure is tenure in Socage. But where the tenant himselfe ought by him, or by any other to make castleward, such is tenure by knights service.

Also in all cases where the tenant holdeth of his Lord to pay to him any certaine rent, that rent is called Rent service.

Also in such tenures in socage, if the tenant haue issue and die, his issue being within the age of 14. yeares, then the next friend of that heire to whom the heritage may not descend, shal haue the ward of the land, and of the heire vnto the age of the heire of 14. yeres, and such warden is called warden in Socage. For if Land descend to the heire by the fathers side, then the mother, or some other nigh cousin of the mothers side shall haue the ward. And if land descend to the heyre by the mothers side, then the father or ꝑ next friend of the fathers side shall haue the ward of such Lands or tenements. And when the heire commeth to the age of 14. yeres complete, he may enter & put out his Warden in Socage, and occupie the land himselfe if he will. And such warden in

Socage shall take no issues or profits of such lands or tenements to his owne vse, but onely to the vse and profit of the heire, and of that shall yeild accompt when it pleaseth the heire, after that the heire hath accomplished the age of fourteene yeres. But such a warden upon such accompt shall haue allowance, of all his reasonable costes and expences of all things. And if such a warden marrie the heire within age of fourteene yeres, he shall make accompt to the heire, or to his executors of the value of the marriage, though he tooke nothing for the value of the marriage, for that it shal be counted his owne folly, that hee would marrie him without taking the value of the mariage, without hee marrie him to such a marriage that is worth in value as much as the marriage of the heire &c. Also if any other man that is not a nigh friend &c. occupie the lands and tenements of the heire as warden in socage, hee shall bee compelled to yeild accompt vnto the heire, as well as his next friend: For it is no plea for him in a writ of accompt to say that he is not his nigh friend &c. But hee shall answere whether hee occupieth the Lands or Tenements as Warden in Socage or not. But inquire if after that the heire haue accomplished the age of fourteene yere, and the Warden in socage continually occupyeth the land, till the heire commeth to full age of 21. yeares. If the heire at his full age shall haue an Action of Accompt against the

Wardein for the time that her hath occupied after the said fourteene yeares, as against him Wardein in socage, or against him as against his bailife.

Also if Wardein in chiualry make his executors, and dye, the heire being within age: The executors shal haue the ward, during the nonage. But if the wardein in Socage make executors and dye, the heire being within the age of fourteene yeares, his executors shal not haue the warde, but another nigh friend to whom the heritage may not dekend, shal haue the ward. And the cause of diuersitie is, for that the wardein in Chiualrie hath the warde to his proper vse, and the wardein in Socage hath not the ward to his owne vse but to the vse of the heire. And in such case where the wardein in socage dieth before any such accompt made by him, the heire is at that without remedie, for that no writ of account lyeth against the executors, but onely for the king.

Also the Lord of whom the Land is holden in Socage after the death of his tenant, shall haue reliefe in such fourme. If the tenaunt holde by Fealtie, and certaine Rent to pay yearely &c. If the termes of payment bee to pay by two termes of the yeare, or by foure termes of the yeare, the Lord shall haue of the heire of his Tenaunt, as much as the rent amounteth that hee should pay by yeare. As if the Tenaunt held of the

Lord

Lord by Fealty, and 2. shillings of rent, payable at certaine termes of the yeare, then the heire shall pay to the lord 2. s. for reliefe aboue tenne shillings that hee shall pay for the rent. Loke more in the Statute of Ann. 19. Hen. 7. cap. 15.

And in such case after the death of the tenant, such relefe is due to the Lord incontinent, of what age soeuer the heyre bee, for that such a Lord may not haue the ward of the bodie nor the land of the heyre. And the Lord in such case ought not to abide the payment of his relefe, after the termes and dayes of payment of the rent, but he ought to haue his relefe incontinent: And therefore he may incontinent distraine after the death of his tenant for the relefe.

In the same maner it is, where a tenãt holdeth of his Lord by Fealty, and by a pound of Comin, or a pound of Pepper, by the yere, and the Tenant dye, the lord shall haue for his relefe a pound of Comin, or a pound of Pepper.

In the same maner it is, where the tenant holdeth to pay by the yere a certain number of Capõs or Hens, or a paire of Gloues, or certaine bushels of wheat, and such other maner things. But in some case the Lord ought to abide to distraine for his relefe till a certaine time. As if the Tenant hold of his Lord by a rose, or by a bushell of roses, to pay at the feast of S. John Baptist. If such a Tenant die in Winter, then the Lord may not distraine for

his reliefe &c. vntill the time that the roses by the course of the yeare may haue their growings &c. Et sic de similibus.

Also if any peraduenture will aske why a man may hold of his Lord by Fealty onely for all maner of services, insomuch, that when the tenant shall make his Fealty, he shal sweare to his Lord that he shal do all services due, & when he hath made Fealty in such case, there is none other service due: To this it may be said, that where the tenant holdeth his land of his Lord, it behoueth that he ought to doe to his lord some maner of service, for if the Tenant nor his heires ought to do no manner of service to his lord, nor to his heire, the by long time continued it should be out of remembrance of whom the land was holden, of the lord, or of his heire, or not, & then more oft & more sooner will men say, that the land is not holden of the lord nor of his heires, then other wise: and vpon this the lord shall loose his Escheate of his land, or precase other forfeiture or profite that he might haue of the land: So it is reason that the lord and his heirs haue some service done vnto him, for a proof, & a witnes that the land is holden of them, and because Fealty is incident to all maner tenures, except tenure in Frankalmoign, as shalbe said in Frankalmoigne, & because that the lord will not at the beginning of the tenure haue any other seruices but fealty, it is reason that a mã may hold of his lord onely by Fealty, and when he hath made

made his Fealty, he hath done all his service.

Also if a man let to another for terme of life certaine lands or tenements, without speaking of any thing to yeild to the lessor, yet hee shal do to the lessor Fealtie, for that he holdeth of him. And if a lease bee made to a man for terme of yeares, it is said the lesse shall doe to the lessor fealty, for that he holdeth of him. And this is proued well by the words in a writ of Waste, when the lessor hath cause to bring a writ of waste against him, the which writ shal say, that the lessee holdeth the Tenements of the lessor for terme of yeres: so that writ proueth a tenure betweene them &c. But he that is tenant at will after the course of the Common Law, shall not make Fealty, because hee hath no maner of a sure estate But otherwise it is of tenant after the custome of the manor, because that he is bound to do Fealty to his lord for two causes: One is because of custome, the other is, because that he taketh his estate in such forme to do Fealty.

Franke almoigne.

TEnant in Franke almoigne is, where an Abbot or Prior, or another man of Religion, or of holy Church, holdeth of his lord in Franke almoigne: that is to say in Latine in liberam Elemosynam, that is to say, in free almes. And such tenure began first in old time when a man in old time was seised of lands or tenements in his demesne as of Fee, and of the

the same Land enfeoffed an Abbot and his co-uent, or Prior and his Couent, to haue and to hold to them and their successors in pure and perpetuall almes, or in Frankalmoigne, or by such words, to hold of the graunter, or of the lessor & his heires in Free almes: In such case the tenements were holden in Frankalmoigne. And in the same manner it is, where the Lands or Tenements were graunted in olde time to a Deane and Chapter, and to their successours, or to a Parson of a Church, and to his successours, or to any other man of holy Church, and to his successours in Free almes, if he had capacitie to take such grants or feoffements &c. And such as hold in Free almes, be bound of right afore God to do Diri-sons, Prayers, and Masses, and other diuine seruices for the soules of the grantors or feof-fors, or for the soules of their heires which be dead, and for the prosperitie & good life of them that be aliue.

And for this they doe at no time no manner of Fealty vnto their Lords, for that such di-uine seruice is better for them before GOD, than any doing of Fealty. And also these words, Free almes or Frãkalmoigee, exclude the Lord to haue any worldly or temporal ser-uice, but only to haue diuine and spirituall ser-uice to be done for him &c. And if such that hold their tenements in Free almes, or frank-almoigne will not, or faile to doe such Di-uine Seruice as is said, the Lord may not

distraine

distraine them for the seruices vndone &c. because it is not set in certaine, what seruice they ought to doe: but the Lord may of them complaine to their Ordinarie, praying him that hee will set punishment and correction of that: And also to prouide & see that such negligence be no more done: And the Ordinary of right ought to do that &c.

But where an Abbot or a Prior holdeth of his Lord by certaine diuine seruice in certain to be done, as for to sing a Masse euery friday in the weeke, for the Soules &c. or euery yere at such a day to sing Placebo & Dirige &c. or to find a Chaplein to sing Masse &c. or to distribute in almes to an hundred poore men, an hundred pence at such a day, in such case, if such diuine seruice be not done, the Lord may distraine &c. for that this diuine seruice is in certain by their tenure what the Abbot or the Prior ought to do. And in such case the Lord shall haue Fealty &c. as it seemeth.

And such tenure is not said tenure in Free almes, but it is said tenure by diuine seruice, for in tenure in free almes, or Frankalmoign, no mention is made of any maner certaine seruice, for none may hold in free almes or frank almoigne if there bee expressed any maner certain seruice that he ought to do.

And if it bee demaunded, if the Tenant in frankmariage shall doe Fealty to the donour or to his heires before the fourth degree bee passed &c. It seemeth that yea, for hee is not

like

like as to this intent to a tenant in frée almes or frankalmoigne, for the tenant in frée almes shall do (because of his tenure) diuine seruice for the lord as it is aforesaid, and that hee is charged to doe by the law of holy Church, and for that he is excused and discharged of Fealty. But tenant in Frankmarriage doth not by his tenure such seruice.

And if he do not to his lord Fealtie, then he doth not to his lord any manner of seruice neither spirituall nor temporall, which should be an inconuenience and against reason, that a man should haue estate of inheritance of an other, and yet the lord shall haue no manner of seruice of him as it seemeth, and so it seemeth that hee shall doe Fealty to his lord vntill the fourth degree be past &c. And when hee hath done Fealty, he hath done all his seruice. And if an Abbot hold of his lord in frée almes, and the Abbot and his Couent vnder their common seale alien the same land to a seculer man in fée simple, in this case the seculer man shall do Fealty to the lord, for that he may not hold of his lord in Frée almes: For if the lord ought not to haue of him Fealty, then hee shall haue of him no maner of seruice which should be an inconuenience, where hee is lord and the tenements are holden of him.

Also if a man grant at this day to an Abbot or to a Priour, Lands or Tenements in Frée almes, or Franke almoigne, their words Frée almes or Franke almoigne bee voide, for that it

it is ordained by the Statute which is called, Quia emptores terrarum, which Statute was made Anno 18. Regis E. primi, That no man may alien or grant lands or tenements in Fee simple to hold of himselfe, so that if a man be seised of certain lands or tenements which he holdeth of his Lord by knights service, and at this day he graunteth the same land to an Abbot, &c. in free almes, or Frankealmoigne, the Abbot shall hold immediatly the same Tenements by Knights service of the Lord of his graunter, because of the same estatute: so that no man may holde in free almes, or in Frankealmoigne, but if it bee by title of prescription, or by force of a grant made to some of his predecessors before the same Statute: But the King may giue Lands or Tenements in Fee simple to hold in free almes or frankalmoigne, or by other service, for he is out of the case of the statute. And note well, that no man may hold Lands or Tenements in free almes, but of the graunter or his heires, and that for the priuitie of the gift: and therfore it is said, that if there be Lord, Meine, and Tenant, and the tenant is an Abbot that holdeth of his Meine in Frankalmoigne, if the Meine die without heire, then the meinaltie shall come by escheat to the said Lord aboue, & the Abbot then shall hold of him immediatly onely by fealtie, and shall doe him fealty, for that he may not hold of him in Frankalmoigne, &c.

And note well, where that such a man of reli-

religion holdeth his lands of his Lord in frée almes &c. his Lord is bound by the law to acquite him of euery maner of seruice ẏ any lord abone him will demand or aske of the same tenãts. And if he acquite him not, but suffer him to be distrained &c. then hee shall haue against his lord a writ of Mesne, and recouer his damages and costs of his suit.

Homage auncestrell.

TEnure by Homage Auncestrell is, where a tenant holdeth his land of his Lord by homage, and the same tenant and his Ancestors whose heire hee is, haue held the same land of the sayd Lord, and of his Auncestors, whose heire the lord is, from time out of mind by homage, & haue done homage vnto him: which is called Homage auncestrell, because of the continuance which hath been by title of prescription in the tenancie, in the blood of the tenant, & also in the lordship in the blood of the Lord. And such seruice by homage ancestrell draweth to it warrantie: if the Lord that is aliue hath receiued homage of such Tenaunt, hee ought to warrant his tenant when hee is impleaded of the lands holden of him by homage Auncestrell. And all such seruice by homage Auncestrell draweth to it acquitance, that is to say, the Lord ought to acquite his Tenaunt against all other Lords abone him of euery manner of seruice. And it is said, that if such tenant bee impleaded by a Præcipe quod red-

reddat &c. and he voucheth his Lord to warrantie, which commeth in by processe, and asketh the Tenent what hee hath to binde him to warrantie, and he sheweth how he and his Ancestors, whose heire he is, haue holden the land of the Vouchee and of his Ancestors, whose heire hee is, by Homage from time out of mind: if the Lord which is vouched receiued none homage of the tenant, nor of any of his Ancestors, the Lord then, if he will, may disclaime in the Lordship, and so put out his Tenaunt of his warrantie. But if the Lord which is vouched hath receiued homage of the Tenant, or of any of his Ancestors, then may he not disclaime, but he is bound by the law to warrant the tenant, & then if the tenant leese the land in default of ꝑ voucher, he shal recouer in value against the voucher of the landes or tenements that the voucher had at the time of the voucher, or any time after.

And it is to witt, that in euery case where the Lord may disclaime in his lordship by the Law, in court of Record, and of that will disclaime, his seigniory is extinct, and the tenant shal hold of the lord next aboue his lord which so disclaimeth. But if an Abbot or Prior be vouched by force of Homage Auncestrell, &c. though hee haue neuer taken Homage, &c. yet he cannot disclaime in this case, nor in none other case, for they cannot deuest that thing in Fee, which hath beene vested in their house, Paschæ 1c. E. 4.

Also

Alſo if a man that holdeth his Land by homage aunceſtrell alieneth his land to another in fee, the alienee ſhall do homage to his Lord: But hee holdeth not of his Lord by Homage aunceſtrell, for that the tenancie was not continued in the blood of his anceſtors of the alienee, nor the alience ſhall never haue the warranty of his land of the Lord, for that the continuance of the tenancie in the tenant is in his blood by the alienation is diſcontinued. And ſo ſee, that if the Tenaunt that holdeth his land by Homage aunceſtrell of the Lord, and ſuch a Tenant alieneth in fee, though that he take eſtate of the alienee againe in fee, hee holdeth the land by Homage, but not by homage aunceſtrell.

Alſo it is ſaid, that if a man hold his Land of his Lord by homage and fealty, and he hath made homage and fealtie to his Lord, and the Lord hath iſſue a Sonne and dyeth, and the lordſhip deſcendeth to his ſonne: In this caſe the Tenant which did Homage to the father, ſhall not doe Homage to his ſonne, for that when a tenant hath made once homage to his Lord, hee is excuſed for terme of his life to make homage to any other heire of the Lord: But yet he ſhall doe fealty to the ſonne & heire of his Lord, though that he made fealty to his father.

Alſo if the Lord after the Homage to him made by his Tenant, grant the ſervice of his Tenant by deed vnto another in Fee, and the te-

Tenant attorneth, &c. the Tenant shal not be compelled to do homage, but he shal do fealtie, though hee did fealtie before to the graunter, for Fealtie is incident to euery attornement, when the lordship is graunted. But if a man be seised of a Manor, and another man holdeth his land of him as of the Manor aforesaid by homage, the which hath done homage to his lord which is seised of the manor, if after that a straunger bring a Præcipe quod reddat against the Lord of the manor, and recouereth the Mannor against him, and sueth execution &c. in this case the tenant shall once againe do homage to him that recouereth the manor, for that the estate of him which receiued homage before is defeated by the recouery. And it shall not lye in the mouth of the tenant to falsifie or defeate the recouerie which was against his Lord. And so see the diuersitie in this case, where a man commeth to his Lordship by recouery, and where he commeth by descent, or graunt of the Seigniory.

And if a Tenaunt which ought by his tenure to doe homage to his Lord, come to his Lord, and say to him, Sir, I owe to doe vnto you homage for the tenements that I hold of you, and I am ready to do you homage for the same tenemẽts, for the which I pray you that you will now receiue it, and if the Lord then refuse to receiue it, then after such refusall the Lord may not distraine the tenant for the homage, before that the Lord require the tenant

to doe homage, and the tenant refuse to doe it.

Also a man may hold his Land by homage auncestrel, & by Escuage, or by other Knights seruice, as well as hee might hold his land by Homage auncestrell in socage.

Graund Serieantie.

TEnant by Graund Serieantie is, where a man holdeth his lands or tenements of our soueraign lord the King, by the seruice which he ought to do in his own proper person, as to beare the Kings banner, or his Speare, or to lead his host, or to be his Marshal, or to beare his sword before him at his Coronation, or to be his Sewer at his Coronation, or his Carver, or Butler, or to be one of his Chamberlaines of his receit of his Eschequer, or to do such seruices, &c. And the cause wherefore such seruice is called Grand serieantie, is for that it is more honorable & worshipfull, and digne, then is the seruice of the tenure by Escuage, for he that holdeth by Escuage, is not limited by his tenure to do any more especiall seruice, then any other that holdeth by Escuage ought to do. But he that holdeth by Graund Serieanty, ought to doe some especiall seruice to the King, that hee that holdeth by Escuage ought not to doe.

Also if the tenaunt which holdeth by Escuage die, his heire being of full age, if he held by a knights fee, the heire shal pay but an C.s. for his

his relefe, as it is ordained by the Statute of Magna charta ca. 2. But he that holdeth of the King by Graund serieantie, & dieth his heire being of ful age, shal pay vnto the King for his relefe, the value of his lands or tenements by the yeare, besides the charges & reprises, which he holdeth of the King by Graund serieantie. And it is to wit, that Serieantia in Latine is seruitium, & so Magna serieantia, is Magnum seruitium, that is to say, a great seruice.

Also those which hold by Escuage ought to do their seruice out of the realme, but they that holde by Graund serieantie for the most part ought to do their seruice within the Realme.

And it is said, that in the marches of Scotland some hold of the King by Cornage, that is to say, to blow an horne for to warne the men of the Countrey &c. when they heare that the Scots or other enemies will come to enter into England &c. which seruice is Grand serieanty, &c. But if any tenant hold of any other Lord then of the King by such seruice of Cornage, that is not Graund serieantie, but it is knights seruice, and draweth to it ward, mariage & relefe, for none may hold by Graund serieantie, but of the King onely.

Also a man may see in the xj. yeare of Henry the 4. fol. 27. that Cokein then beeing chiefe Baron of ꝑ Eschequer came into the common Place, bringing with him a copy of a Record in these wordes, Talis tenet tantam terram de domino Rege per Serieantiam, ad inueniendū

vnum hominem ad guerram infra quatuor ma-
ria &c. that is to say, Such a man holdeth so
much land of our soueraigne lord the King by
Serieanty, to find one man appointed for the
warre within the foure seas, and he demanded
whether it was Graund serieantie, or Petie
serieantie: And Hank. then said, that it was
Graund serieantie, for that it was service to
be done by the body of a man, & if that hee may
not find a man to doe service for him, hee must
doe it himselfe: to whom the other Justices
assented. Cokaine then said, that tenant in this
case shal pay relefe to the value of the land by
yere, to ꝑ which was none answer. And note,
that all they that hold of the King by Graund
serieanty, hold of the King by knights service,
and the King of that shal haue ward, mariage
and relefe, but the king shall not haue of them
Escuage, if they hold not by Escuage.

Petie Serieantie.

TEnannt by Petie Serieantie is, where a
man holdeth his land of our Soueraigne
Lord the King, to yeeld vnto him yearely a
Bow, a Sword, a Dagger, or a Knife, or a
spere, or a paire of gloues of maile, or a paire of
spurres gilt, or an arrow, or diuers arrowes,
or to yeeld such other small things touching
the warre, and such service is but Socage in
effect, for that that the Tenant by his tenure
ought not to goe, nor to doe any thing in his
owne

owne proper person touching the war. But to yeild and pay yerely certaine things vnto the king, as a man ought to pay a rent.

And note, that no man holdeth Land by Grand serieanty, nor by Petie serieantie, but of the king.

Burgage.

TEnure in Burgage is where an auncient Borough is, of the which the king is lord, and they that haue tenements within the borough hold of the king their tenements, that euery tenant for his tenement ought to pay to the king a certaine rent by yeare &c. And such tenure is but tenure in socage. And the same manner is where another Lord spirituall or temporall is Lord of such a borough, and the tenants of the tenements in such a Borough hold of their Lord to pay each of them yerely an annual rent: and it is called tenure in burgage, for that the tenements within the Borough be holden of the Lord of the Borough by certaine rent &c. And it is to wit, that the auncient Townes called Boroughes, be the most auncient and eldest townes that be within England, for the Townes that now bee Cities or Counties, in old time were Boroughes, and called Boroughs, for of such old Townes called Boroughs, come the Burgesses of the Parliament, to the Parliament when the K. hath summoned his Parliament

Also for the greater part, such Boroughes haue diuers customes and vsages which be not had in other townes, for some Boroughes haue such a custome, that if a man haue issue many sonnes and dyeth, the youngest sonne shall inherite all the tenements which were his fathers within the same Borough as heire vnto his father, by force of the custome, the which is called Borough English.

Also in some boroughes by the custome, the wife shal haue for her dower all the tenements which were her husbands.

Also in some Borough by the custome, a man may deuise by his Testament his landes & tenements which he hath in fee simple within the same Borough at the time of his death, and by force of such deuice, hee to whom such deuice is made after the death of the Deuisor, may enter into the tenements to him deuised, to haue and to hold to him after the forme and effect of the deuise without any liuery of seisin thereof to be made to him.

Also though a man may not graunt nor giue his tenenements to his wife during the couerture, for that that his wife and he be but one person in the Law, yet by such custome he may deuise by his Testament his tenements to his wife, to haue and to hold to her in Fee simple, or in Fee tayle, or for terme of life, or peres, for that such deuise taketh no effect, but after the death of the deuisor. And if a man at diuers times make diuers Testamments, and

diuers

diuers deuises &c. yet the last deuise and will made by him, shall stand and abide.

Also by such custome a man may deuise by his Testament, that his executors may alien and sel the tenements that he hath in Fee simple, for a certaine summe, to distribute for his eimes: In this case though the deuisor die seised of the Tenements, and the tenements descend vnto his heire, yet the executors after the death of the testator may sell the tenements so deuised, and put out the heire, & thereof make a feoffement, alienation, and estate by deede, or without deed, to them to whom the sale is made vnto.

And so may yͤ see a case, where a man may make a lawfull estate, and yet hee hath nought in the tenemẽts at the time of the estate made: And the cause is for that, that the custome and vsage is such. Quia consuetudo ex certa causa rationabili vsitata, probat communem legem: For a custome vsed vpon a certaine reasonable cause, proueth the common law.

And not well, no custome is to bee allowed, but such custome as hath bẽn vsed by title of prescription, that is to say, from time wherof is no mind. But diuers opinions haue beene of time out of mind, & of title of prescription, which is all one in the law, for some men haue sayd, that the time of mind should be said for time of limitation in a writ of right, that is to say, from the time of king Richard the first after the Conquest, as is giuen by the statute of

westminster the first, for that a writ of Right is the most highest writ in his nature that may bee. And in such a writ a man may recouer his right of the possession of his auncestors, of the most ancient time that any man may by any writ by the Law. And in so much that it is giuen by the said Estatute, that in such a writ none shall be heard to aske of the seisin of his auncestours of more longer time than of the time of King Richard aforesaid, therefore this is proued, that continuance of possession, or other customes and vsages vsed after the same time is title of prescription, and this is certaine. And other haue said, that well and trueth it is, that seisin and continuance after the limitation &c. is a title of prescription, as is aforesaid, and by the cause aforesaid. But they haue said that there is also another title of prescription that was at the common law, before any estatute of limitation of writs &c. And that it was where a Custome or vsage, or other thing had beene vsed, for time whereof mind of man runneth not to the contrary: And they haue said that this is proued by the pleading where a man will plead a title of prescription of custome &c, he shal say that such customs hath beene vsed from time whereof the memorie of men runneth not to the contrarie, that is as much to say, when such a matter is pleded, that no man then aliue hath heard any proofe to the contrary, nor hath no knowledge to the contrary, & in so much that

such

such title of prescription was at the Common Law, and not put out by any statute, Ergo it abideth as it was at the Common Law, and the sooner, insomuch that the said limitation of a Writ of Right &c. is of so long time passed Ideo quære de hoc. And many other customes and vsages haue such ancient boroughs.

Also euery borough is a towne, but not the contrary. More shalbe said of customes in the tenure of Villenage.

Villenage.

TEnure in villenage is most properly when a Villeine holdeth of his Lord (to whom he is villein) certaine lands & tenements after the custome of the Mannor, or els at the will of his lord, & to doe his Lord villein seruice, as to beare, bring, and carry out the dung & filth of the Lord vnto the land of the lord, there to lay it, cast it, & spread it abroad vpon the land, and to doe such other manner of seruice. And some frée tenants hold their tenements after the custome of certain manors by such seruice, and their tenure is called tenure in villenage, and yet they be no villeines, for no Land holden by Villenage, or villein lands, or any custome rising of the Land, shal euer make a frée man Villeine: But a villeine may make frée land to be villein land vnto his Lord. As if a villeine purchase Land in fee simple, or in fee taile, the lord of the villeine may enter into the land, & put out the villeine and his heires for euer,

euer, and after the Lord (if he wil) may let the same land to the villein, to hold in villenage.

Also if a Feoffement be made to a certaine person or persons in fee, to the vse of a villein, or if a Villeine with other persons be infeoffed to the vse of a Villeine, what estate soeuer the villeine hath in the vse, in fee taile, for term of life, or yeares, the Lord of the Villein may enter in all those Lands and tenements, likewise as if the Villein had beene alone seised of the demeine: And that is by the Statute of Ann 19. H. 7 ca. 15. But if a free man wil take any lands or tenements of his Lord by such Villeine seruice, that is to say, to pay a fine to his Lord for his marriage, or for the mariage of his sonne, or his daughter, then shal he pay such a fine for the mariage &c. for that it is the folie of such a free man, to take in such forme Lands or Tenements to hold of his Lord by such bondage, yet that maketh not the free man Villeine.

Also, euery Villeine, either he is villein by prescription, that is to say, hee and his auncesters haue been Villeines time out of mind, or he is villeine by his owne confession in Court of Record. But if a free man haue diuers issues, and after confesseth himselfe to be villein to another in Court of Record, yet his issues which he hath before the confession be free, but the issues which he shal haue after the confession &c. shalbe Villeines.

Also if a villeine purchase Lands and alie-

neth

neth the same lands to another before his lord enter, then the Lord may not enter, for it shall bee iudged his owne folly that hee entred not when the Land was in the Villeines hands. And so it is of his other goods, for if the Villeine buy and sell, or giue goods to another before that the lord seise the goods, then the lord may not seise them. But if the Lord before any such sale or gift commeth within the house of the villein where such goods be, & there openly among the neighbors claime the same goods to be his, and so seise parcell of the same in name of seisin of all his goods &c. this is said a good seisin in the law. And the occupation that the villein hath after such claime in the goods, shall be taken in the Law, in the right of the lord. But if the King haue any villeine that purchaseth lands, & alieneth before that the King enter, yet the King may enter in the Land in whose hands soeuer the Land commeth: or if the villeine buy or sell diuers goods before that the King seise the goods, yet the King may seise them in whose hands soeuer they be, quia nullum tempus occurrit Regi, for no time runneth against the King.

Also if a man let Land to an other for terme of life, sauing the reuersion to him, and a villeine purchaseth of the lessour the reuersion, in this case it seemeth that the Lord of the Villeine may incontinent come to the Land, and claime the same reuersion as Lord of the same Villeine, and by this clayme,

the

the reuersion is incontinent in him, for in any other forme he may not come to the reuersion, for he may not enter vpon the tenant for term of life: And if he ought to attend till after the death of the tenant for terme of life, then happely he might come too late, for peraduenture the Villeine will graunt or alien to another in the life of the tenant for terme of life. In the same maner it is where a villeine purchaseth the Aduowson of a Church full of an incumbent, that the Lord of the villeine may come to the said Church and claime the Aduowson. And by this claime the Aduowson is in him, for if he abide till after the death of the incumbent, and then present his Clerke to the saide Church: Then in the meane time the villein might alien the Aduowson &c. and so put out the Lord from his presentation.

Also there is a villeine regardant and a villeine in grosse. Villeine regardant is as if a man be seised of a Manour, to which a villein is regardant, and he that is seised of the said Manour, or they whose estate he hath in the same Manour haue been seised of the said villeine and of his auncestors as villeins regardant to the Manour from time out of mind. And villeine in grosse is where a man is seised of a Manour, to the which a villein is regardant, and granteth the same villeine by his deed vnto another, then he is villein in grosse, and not regardant.

Also if a man and his auncestours whose

heire

heire he is, haue been seised of a Villeine, and of his Auncestors, as villeines in grosse time out of minde, such beene Villeines in grosse. And note well, that of such things which may not bee graunted nor aliened without Deed or Fine, a man that will haue such things by prescription may not otherwise prescribe but in him, and his Auncestors whose heyre hee is, and not by these wordes, in him and whose estate hee hath, for that that hee may not haue their estate without deede or writing, the which behoueth to be shewed to the Court, if hee will haue any aduantage of this: and because that the graunt and the alienation of a Villeine lyeth not without deed or other writing, a man may not prescribe in a villeine in grosse without shewing of writing, but in himselfe that claymeth the Villeine, and in his auncestors whose heire he is. But of those things which bee regardant or appendant to a Mannour, or to other Lands or Tenements, a man may prescribe that hee and they whose estate hee hath were seised of the Mannor, or such Lands or Tenements, as regardaunts or appendants to the Mannour, or to such Lands or tenements, &c. from time out of minde: and the cause is for this, that such a Mannor, Lands and tenements, may passe by Alienation without deede &c. And it is to wit, that nothing is named regardant to a Mannour but a Villeine. But certaine other things, as Annowsons and

Com-

Common of pasture, &c. be named appendants to the Mannour, or to other Land and Tenements.

Also if a man in Court of Record knowledge himselfe to bee villeine that never was villeine before, such one is villeine in grosse.

Also, a man that is Villeine, is called Villeine, and a woman that is Villeine is called Nieke. And a man that is outlawed is called an Outlaw, and a woman that is outlawed is called a Waife.

Also if a villeine take a free woman to wife, the issue between them shall be villeine. But if a Nieke take a free man to husband, their issue shall be free. And that is contrarie to the Law Ciuill, for there is said, That partus sequitur ventrem.

Also no Bastard may bee Villeine, but if that hee will knowledge himselfe to bee Villeine in Court of Record, for hee is in the Law, quasi nullius filius, as the sonne of no man, for that hee may bee inheritour to no man.

Also euery villein is able and free to sue all manner of actions against euery person, except against his Lord to whom he is villeine: and yet in certaine things hee may haue against his Lord an action, as of Appeale for the death of his father, or of his other ancestors whose heire he is. Also a Nieke which is rauished by her Lord may haue Appeale of Rape against him.

Also

Alſo if a Villeine be made executor to ano-ther, and the Lord of the Villeine was indebted to the teſtator in a certaine ſumme of money, the which is not payed: In this caſe the villeine as executor to the teſtator, ſhall haue an action of debt againſt his Lord, becauſe he ſhal not recouer the debt to his proper vſe, but to the vſe of the teſtator.

Alſo the Lord may not take out of the poſſeſſion of ſuch a villeine, that is Executor, the deads goods, and if hee doe, the Villeine as Executor ſhall haue an action of Treſpas againſt his Lord for the ſame goods ſo taken, and recouer damages to the vſe of the teſtator. But in all theſe caſes it behoueth the Lord (which is defendant in ſuch actions) to make proteſtation that the plaintife is his villein, or elſe the villein ſhalbe infranchiſed, though the matter bee found for the Lord againſt the villeine, as it is ſaid.

Alſo, if a villeine ſue an action of Treſpaſſe, or other action againſt his Lord in one ſhire, and the Lord ſaith, that hee ſhall not bee anſwered, for that he is villeine regardaunt to his Mannour in another Shire, and the plaintife ſaith, that hee is franke and of free eſtate, and no Villeine, this ſhall bee tried in the Shire where the plaintife hath conceiued his Action, and not in the Shire where the Mannor is, and this is in fauour of liberti-e, and it is abiudged Mich. 40 Edward the third.

And

And for this cause was made a statute in the ninth yeare of Richard the second, the tenour of which insueth in such forme.

Also for that, where many Villeines and Nieces, as well of great Lords as of other folke spirituall and temporall, flie and goe into Cities and places franchised, as the Citie of London, and other like places, and saine diuers suits against their Lords, because they would make themselues to bee infranchised, it is accorded and assented that the Lordes, nor none other shalbe forebarred of their villeines, because of their answer in the law. By force of which statute, if any villein wil sue any maner of action to his owne vse in any Shire where it is hard to trie &c. against his Lord, his Lord may chuse to plead that the plaintife is his villeine, or to make protestation that he is his villeine, and to plead another matter in barre, & if they be at issue, and the issue be found for the Lord, then the Villeine, is Villeine as he was before, by force of the same statute: but if the issue be found for the villeine, then is the villeine franke and free, for that the Lord tooke not for his plee, that the villeine was his villeine, but tooke it by protestation.

Also the Lord may not mayme his Villeine, for if he mayme his Villeine, hee shall of that be indicted at the Kings suit. And if hee be of that attainted he shal for that make grieuous Fine and ransome to the King. But it seemeth that the villeine shall not haue by the

Law

law any appeale of Maime against his Lord, for in appeale of Maime a man shall not recouer but his damages. And if the Villeine in that case recouer damages against his Lord, and hath thereof execution, the Lord may take that that the Villeine hath in execution from the Villeine, and so the recouerie standeth voyd.

Also if the villeine be demandant in an action reall, or plaintife in an action personall against his Lord, if the Lord will plead in disabilitie of his person, he may not make playne defence, but he shall defend but the wrong and the force, and demand Judgement if he shall bee answered, and shew his matter by and by how he is Villeine, and demand Judgment if he shall be answered.

Also, sixe manner of men there bee against whom if they sue actions, &c. Judgement may be asked if they shall bee answered: One is, where the villeine sueth an action, &c. against his Lord, as in case aforesaid. The second is, where a man is outlawed vpon an Action of debt or trespas, or vpon any other action or indictment, the Tenaunt, or the Defendant may shew all the matter of the Record and the outlawrie, and demand iudgement if he shall be answered, because that he is out of the law to sue an action during the time that he is outlawed. The third is, where an alien borne out of the allegeance of our Soueraign Lord the King, if such alien sue an Action reall or per-

perſonal, the tenant or defendant may ſay, that he was borne out of the kings allegeance, and aske iudgement if he ſhall be anſwered. The fourth is, Where a man by iudgement giuen againſt him vpon a writ of Præmunire facias, &c. is out of the Kings protection, if he ſue any action, & the tenaunt or defendant ſhew all the Record againſt him, he may aske iudgement if he ſhalbe anſwered, for the Lawes the Kings writs bee the things by which a man is protected and holden, and ſo during the time that a man in ſuch caſe is out of the kings protection, hee is out of helpe and protection by the Kings Law, or by the Kings writ. The fift is, where a man is entred and profeſſed into Religion, if ſuch a perſon ſue an action, the tenant or defendant may ſhew that ſuch a one is entred into Religion in ſuch a place, into the Order of Saint Benet, and is there a Monke profeſſed, or in the Order of Friers Minors or Preachers, and is there a Frier profeſſed, and ſo of other orders of religion, &c. and aske iudgement if he ſhalbe anſwered, and the cauſe is this, that when a man entreth into Religion, and is profeſſed, he is dead in the Law, and his ſonne or next coſin incontinent ſhall inherite him, as well as though hee were dead indeed: when he entreth into Religion, he may make his Teſtament & his executors, and they may haue an action of det due to him before his entry into religion, or any other action that executors may haue, if he were dead

in

in deed. And if he make none executors when hee entreth into Religion, then the Ordinary may commit the Administration of his goods to other, as if he were dead in deed. The first is, where a man is accursed by the law of holy Church, and he sueth his action reall or personall, the tenant or defendant may plead that he that sueth is accursed, & of this it behoueth him to shew the Bishops Letters vnder his seale, witnessing the accursing, and aske iudgment if he shalbe answered &c. but in this case if the demaundant or plaintife cannot denv it, the writ shall not abate, but the iudgment shal be, that the tenant or defendant shall goe quite without day, for this, that when ꝑ demandant or plaintife hath purchased his letters of absolution, and shewed them to the Court, hee may haue a resummons or a reattachmēt vpon his originall, after the nature of his writ &c. But in the other cases the writ shal abate, &c. if the matter shewed may not be gainsaid.

Also, if a villeine be made a seculat ꝓyest, yet his Lord may seise him as his villein, and seise his goods, &c. But it seemeth, that if the villeine enter into religion, and is ꝓfessed &c. that the Lord may not take him, nor seise him, for that he is dead in the Law. And no more then if a Free man take a Niefe to his wife, the Lord may not take nor seise the wife of the husband: But his remedie is to haue an Action against the husband, for that hee tooke his Niefe to wife without his will,

and so may the lord haue an action against the Soueraigne of the house that taketh & admitteth his villein to be professed in ꝑ same house without licence and will of his Lord, & and shall recouer his damages to the value of the villein, for he that is professed Monke &c shall be a Monke, & as a Monke shall be taken for terme of his life naturall, except he be deraigned by the Law of the holy Church, and he is holden by his religion to keep his cloister, and if the Lord may take him out of the house, then hee should not line as a dead person, nor alter his religion, which should be inconuenient &c. Also if there be Warden in Chiualry of bodie and Lands of a childe within age, if the child when he commeth to the age of 14. yeere enter into Religion & is professed, the warden hath none other remedy, as to the ward of the body, but a writ of Rauishment of Ward against the Soueraigne of the house. And if any being of full age, that is cosin & heire vnto the childe enter into the land, the warden hath no remedy as to the ward of the land, because that the entry of the heire of the child is lawful in such case.

Also in many other cases the Lord may make Manumission and infranchising to his villeine. Manumission is properly when the Lord maketh his deed to his villein to infranchise him by this word Manumittere, which is as much to say, as extra manum, & extra potestatem alterius ponere, as to put him out

of

of the hands and the power of an other. And for this that by such a deed the Villeine is put out of the hand and power of his Lord, it is called Manumission. And so every manner of infranchising made to a villeine, may be said a Manumission. Also if the Lord make to the villeine an Obligation for a certaine summe of money, or graunt vnto him by his deed an annuitie, or let him by his deed, lands or tenements for terme of yeares, the villeine is infranchised. And if the Lord make a Feoffement to his villeine of any Landes or Tenements by deed, or without deed, in Fee simple, or Fee taile, or for terme of yeares, and deliuereth vnto him the seisin, this is an infranchising: But if the Lord make to him a Lease of Lands and Tenements to hold at the will of the Lord, by deede, or without deede, this is no infranchising, for that he hath no maner of certainty nor surety of his estate, but that the Lord may put him out when hee will. Also, if a Lord sue against his Villeine a Præcipe quod reddat, if hee recouer, or be nonsuit after apparance, this is manumission, for this that hee may lawfully enter into the land without such suit. In the same manner it is if he sue against his Villeine an action of Debt, or of Accompt, or of Couenant, or of Trespasse, or such other, this is an Infranchising &c. For this that hee may imprison his villeine, & take his goods without such suit. But if the Lord sue his villeine by Appeale of Felonie, this is

none infranchiſing to the Villeine, though the matter of the appeal is found againſt his lord, becauſe that the lord may not haue the villeine hanged without ſuch ſuit. But if the villeine were not indicted of the ſame felony before the appeal ſued againſt him, and is acquited of the felony, ſo that he recouer damages againſt the lord for the falſe appeal: Then in this caſe the villein is infranchiſed, becauſe of the iudgment of damages that was giuē to him againſt his Lord. And more caſes & matters there be by which a villein may be infranchiſed againſt his Lord, Sed de illis quęre. Alſo if a lord of a Manor will preſcribe that it hath bin accuſtomed within his manor, time out of mind, that euery Tenant within the ſame Manor that marieth his daughter to any man without licence of the Lord of the manor ſhal make fine to the Lord for the time being, this preſcription is void, for none ought to make ſuch fines but onely Villeines, for euery free man may freely marry his daughter to whom it pleaſeth him and his daughter. And becauſe that this preſcription is againſt reaſon, ſuch preſcription is void But in the ſhire of Kent of lands holden in Gauelkind, where by the cuſtome vſed time out of mind, the childrē males ought euenly to inherite, this cuſtome is allowable, for this that it is with ſome reaſon, becauſe that euery Sonne is as great a Gentleman as the elder Sonne, and becauſe of that more great honour and valure ſhall growe, then if

he had nothing by his auncestors, where peraduenture he might not so grow &c.

Also, where by the custome called Borough English, in some Borough the youngest sonne shal inherit all the tenements &c. this custome also standeth with reaſō, because that the yonger sonne if he lacke father and mother, (because of his yong age) may least of all his brethren helpe himselfe &c. But if a man will prescribe, that if any cattel were vpon ꝑ demeans of the manor, there doing damage, that ꝑ lord of the manor for the time being hath vsed to distraine them, & the distres to retaine till fine were made to him for the damages at his will, this prescription is void, because it is against reason, that if wrong be done any man, that he therof should be his owne Iudge, for by such way if he had damages but to the value of an halfpennie, he might alleſe a haue therefore an C.£ which should bee against all reason. And so such prescription, or any other prescription vsed, if it be against all reason, this ought not, nor will not be allowed before Iustices, Quia malus vſus abolendus eſt.

Rents.

THree manner of Rents there be, that is to say, Rent seruice, Rent charge, and Rent seche. Rent seruice is, where a man holdeth his land of his Lord by fealty & certaine rent, or by other seruice, and certaine rent, or by homage, fealtie, and certaine rent, and if rent

ſeruice at any day that it ought to be paied, be behinde, the Lord may diſtraine for that of common right. And if a man now will giue Landes or tenements to another in the tayle, yelding to him certaine rent by the yere, he of common right may diſtraine for the rent behinde, though that ſuch gift was made without deede, becauſe that ſuch rent is rent ſeruice: But in ſuch caſe where a man vpon ſuch a gift, or leaſe, will reſerue to him rent ſeruice, it behoueth that the reuerſion of the Landes & tenements to be in the donor, or in the leſſor: for if a man will make a feoffement in fee, or will giue Landes in the tayle, the remainder ouer in Fee ſimple, without a deede, reſeruing to him certaine rent, ſuch reſeruing is voyd, becauſe that no reuerſion is in the Donour, and ſuch a tenant holdeth his land immediately of the Lord of whom his donor held. And this is by force of the ſtatute of Weſtminſter the 3. cap. 1. Quia emptores terrarum. For before the ſame ſtatute, if one made a feoffement in fee ſimple by deed, or without deed, yelding to him, or to his heires certaine rent, this was rent ſeruice, and for this he might diſtraine of common right: And if he made no reſeruation of any rent, nor of any ſeruice, yet the feoffee held of the feoffor by ſuch ſeruice, as the feoffor held ouer of his Lord next aboue. But if a man by deed indented at this day, make ſuch a gift in the tayle, the remainder ouer in Fee. or Feoffement in fee, and by the ſame In-

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denture reserueth to him and to his heires a certaine rent, and that if the rent bee behinde, that it shalbe lawfull to him and to his heires to distraine &c. such rent is rent charge, because such lands and tenements be charged of such distresse by force of the writing only, and not of common right. And if such a man in such a deed indented, reserue to him and to his heires certaine rent, without any such clause set or put in the deed, that he may distrain &c. that such rent is rent secke, because that hee cannot distrain to haue the rent if it be denied by the same distresse, and if he were neuer seised in this case of the rent, hee is without remedy, as it shal be said hereafter.

Also if a man seised of certaine land, grant by his deed Poll, or by Indenture, a yerely rent issuing out of the same L. and to another in fee simple, or in fee tayle, or for terme of life &c. with clause of distresse &c. then that is rent charge, and if it be without clause of distresse, then it is rent secke. And note well, that rent secke, idem est quod redditus siccus, because that no distresse is incident to it.

Also if a man grant by his deed rent charge to another, and the rent is behind, the grantee may chuse if hee will sue a writ of annuity of it against the grantor, or distraine for the rent behind, and the distresse to withhold till he bee of that paid: But he may not do and haue both together, for if hee take a writ of annuity, then the land is discharged, and if he sue not a writ

of

of annuity, but distraine for the arrerages, and the tenant saeth a Replegiarie &c. & the grantee auoweth the taking of the distresse in the Land &c. in Court of Record, then is the land charged, and the person of the grantor discharged of an action of Annuity.

Also, if a man will that another shall haue a rent charge issuing out of his Landes, but hee will not that his person shalbe charged in any manner by a writ of Annuity, then hee may haue such clause in the end of his deede, Prouiso semper quod præsens scriptū, nec aliquid in eo specificatum, non aliqualiter se extendat ad onerandum personam meam per breue de Annuali redditu, Sed tantummodo ad onerandum terra & tenementa prædicta, de Annuali redditu prædicē, and then is the land charged, and the person of the grantor discharged.

Also, if a man make such a deed in such manner, that if A. of B. be not yearely paied at the Feast of Christmasse for terme of life, xx.s. of lawfull money, that then it shalbe lawfull to the said A. of B. to distraine for it in the manor of Fee this is a good rent charge, because that the manor is charged of the rent by way of distresse: and yet the person himselfe that made such a deed is discharged in this case of an action of annuity, because that he granted not by his deed any annuity to the said A. of B. but grāted only he may distrain for his annuity.

Also, if a man haue a rent charge to him and to his heires issuing out of certain Land,

if

if he purchase any parcell of the Land to him and to his heires, all the rent is extinct and annulled, because that rent charge may not in such manner be apportioned: but if a man that hath rent service purchase parcell of the land whereof the rent is, this shall not extinct all, but for the portion, for that rent service in such case may be apportioned, and shall bee apportioned after the value of the Land: But if a Tenaunt hold his Land by service to yeild to his Lord yearely at such a feast an Hoyle, or an Hawke, or such thing semblable, if in such case the Lord purchase parcell of the land, the service is gone, because that such service may not be serured nor apportioned. But if a man hold his Land of another by Homage, fealty, and escuage, and by certaine rent, if the Lord purchase parcell of the Land &c. in that the rent shall be apportioned, as is aforesaid, but yet in this case the homage and fealty abideth whole to the Lord, for the Lord shall haue the homage and fealtie of his Tenant for the remnant of Lands and tenements holden of him as hee had before &c. for this that such services be no annuell services, and may not be apportioned: But the Escuage may and shalbe apportioned after the quantity and rate of the land.

Also if a man haue a rent charge, and his father purchaseth parcel of the tenements charged in the fee, and dyeth, & that parcell descendeth to his son that hath the rent charge, now-

this

this rent charge shal be appoꝛcioned after the value of the Land, as is aforesaid of rent seruice, because that such a poꝛcion of the Land purchased by the father, commeth not to the sonne by his owne deede, but by discent and course of the Law.

Also if there be Lord and Tenant, and the tenant holdeth of his Lord by fealty and certaine rent, and the Lord granteth the rent by his deede to another &c. reserving to him the fealty, and the tenant attourneth to the grantee of the rent, now such rent is rent secke to the grantee, for this that the tenements be not holden of the graunte of the rent, but beholden of the Lord that reserued to him fealtie, And in the same maner it is where a man holdeth his Land by homage, fealty, and certain rent, if the Lord grant the rent, sauing to him the homage, such rent after such grant is rent secke. But where Lands or Tenements bin holden by homage, fealty, and certaine rent, if the Lord will graunt the homage of his land by his deed to another, sauing to him the remnant of the services, and the tenant attorneth to him after the forme of the graunt, now in this case the Tenant holdeth his Land of the grantee: and the Lord that graunteth the homage, shal not haue but the rent as rent seck, and shall never distraine for the rent: for this, that neither homage, nor fealty, nor escuage, may be said secke, for her that hath or ought to haue of his tenant homage, or fealtie, or

escuage,

escuage, may of common right distraine for it if it be behind, for homage, fealtie, and escuage been services by which lands and tenements be holden, s been such that in no manet may be taken but as services. But otherwise it is of rent that was once rent service, for this that when it is severed &c. by the grant of the Lord from the other services, it may not be said rent service, for this, that it hath not to it fealtie which is incident to every manner of rent service, and for this it is said rent seeke.

Also if a man let Land to another for terme of life, reserving to him certaine rent, if hee graunt the rent to an other, saving to him the reuersion of the Land so letten by his deed &c. such rent is but rent seeke, for this that the grauntee hath nothing in the reuersion of the land. But if he grant the reuersion of the land to another for terme of life, and the tenant attourneth &c. then hath the grauntee the rent as rent service, because he hath the reuersion for terme of life. And so it is to be vnderstood that if a man giue Landes or Tenements in the taple, reserving to him and to his heires certaine rent, or let land for terme of life, reserving certaine rent, if he graunt the reuersion to another, and the Tenant attourneth, all the rent and seruice passeth by the word of the graunt of reuersion, for this that all the rent and seruice in such case bee incidents to the reuersion, and passe by the grant of reuersion. But though hee graunt the rent to an other,

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the reuersion passeth not by such graunt, &c. And so note well the diuersitie. And so it is holden Paschæ 12.E.4.f.3. But it is adiudged Ann 26.Lib.Ass.pl.38.39. Whereas the seruices of the tenant in tayle were graunted, that that was a good graunt, yet notwithstanding the reuersion remaines.

Also if there be Lord, Meine, & Tenaunt, and the Tenant holdeth of the Meine by the rent of fiue shillings, and the Meine holdeth ouer by xij. pence, if the Lord aboue purchase the tenancy in Fee, then the seruice of the meinaltie is extinct, for this, that when the Lord aboue hath the tenancy, he holdeth of the Lord next aboue him. And if hee ought to hold it of him that was meine, then hee should hold one selfe tenauncie immediatly of diuers Lords, which should bee inconuenient, and the Law will sooner suffer a mischiefe then an inconuenience, and for this the seignory of the meinaltie is extinct. But insomuch that the tenant held of the meine by fiue shillings, & the meine held but by xij. pence, so that hee had more aduantage by 4. shillings, then hee payed to his Lord, he shall haue the said 4. shillings as rent secke yearely of the Lord that purchased the tenancie.

Also, if a man that hath Rent secke, is once seised of any parcell of the Rent, and after if the Tenaunt will not pay the Rent that is behinde, this is his remedy: It behooueth him to goe by himselfe, or by another,

to

to the lands and tenements, whereof the rent is iſſuing, and there to demaund the arrerages of the rent. And if the tenant deny to pay it, this denying is a diſſeiſin of the rent. Alſo, if the tenant at the time be not ready to pay it, this is a denying and a diſſeiſin. Alſo, if the Tenant, nor none other be dwelling vpon the lands or tenements when hee aſketh the arrerages, &c. this is a denying in law, and a diſſeiſin in deede, and of ſuch diſſeiſins hee may haue an Action of Nouel diſſeiſin againſt the tenant, e recouer the ſeiſin of the rent, and the arrerages, and his damages and coſtes of his writ, and of his plee, &c. And if after ſuch recouery the rent be another time denied him, then he ſhall haue a Rediſſeiſin, and recouer double damages.

And it is to be had in mind, that this name Aſſiſe, is Equiuocum, for ſometime it is taken for a Iurie, for in the beginning of the record of Aſſiſe of Nouel diſſeiſin, the record ſhall begin thus, (Aſſiſa venit recogn') which is to ſay, that Iuratores veſi recogn', and the cauſe is for this, that by the writ of Aſſiſe is commanded to the Sheriffe, Quod faciat xij. liberos & legales homines de vicineto, &c. videre tenſtum illud, & nomina eorum imbreuiare, & quod ſummoñ eos per bonos ſummon' quod ſint coram Iuſticiarijs &c. parat inde facere recognitionem &c. And for this, that by force of ſuch an originall writ, a Panell by force of the ſame writ ought to bee retourned &c. it is ſaid

layd in the beginning of the Record in Assise, Assisa venit recogn. &c. Also in a writ of right it is commonly said, that the tenant may put him in God, and in the great Assise, &c. Also there is a writ in the Register called, De magna Assisa eligenda: so is this a good proofe that this name Assise is sometime put for the Jurie, and sometime it is taken for all the writ of Assise, & after that intent it is most properly and most commonly taken, as Assise of Nouel disseisin, is taken for all the writ of Assise of Nouel disseisin: In the same manner Assise of common of pasture, is taken for all the writ of Assise of common of pasture, & Assise of Mortdaunceſter, and Assise of Darreine presentm. &c. But it seemeth that the cause why such writs at the beginning were called Assises, is for this, that by euery such writ it is commanded to the Sheriffe, that he summon xij. &c. which is as much to say, that hee ought to summon a Jurie &c. and sometime Assise is taken for an ordinance, for to set certaine things in a certain rule and disposition, as an ordinance that is entred in the auncient statutes is called Assisa panis & ceruisiæ.

Also if there be Lord & tenant, and the Lord graunteth the rent of his tenant by deed to an other, sauing to him the other seruices, and the tenant attourneth, that is a rent iecke, as it is afore-said: But if the rent bee denied him at the next day of payment, hee hath no remedie, for this, that he had not thereof any possession:

But

But if the Tenant when he attorneth to the grauntee, or after, will giue a penie, or a halfe penie to the grauntee in name of seisin of rent, then if after at the next day of paymẽt the rent be denyed him, he shal haue an Assise of Nouel disseisin. And so it is, if a man graunt by his deed a yerely rent issuing out of his land to an other &c. if the grauntee then after pay to the grantee a penie, or an halfe penie, in the name of seisin of the rent, then if after the first day of payment the rent be denied, the grauntee may haue an Assise, or else not.

Also of rent seeke a man may haue an Assise of Mortdauncestre, or a writ of Aiel, or Cosinage, & all other maner of actions reals, as the case lieth, as he may haue of any other rent.

Also there be three causes of disseisin of rent service, that is to say, Rescous, Replevin, and Enclosure. Rescous is, when the Lord distreineth in the land holden of him for his rent behind, if the distresse be rescued from him, or the Lord come vpon the land, and would distrain, and the tenant, or another man will not suffer him &c. Replevin is, when the Lord hath distrained, and Replevin is made of the distresse, by writ, or by plaint &c. Enclosure is, if the lands and tenements be so enclosed, that the Lord may not come within the lands and tenements for to distrain. And the cause why such things so done be disseisins made to the Lord, is for this, that by such things the Lord is disturbed of the meane by which he ought to

haue come to his rent. And foure causes be of disseisin of rēt charge: that is to say, Rescous, Repleuin, Inclosure, and Denier, for denying is a disseisin of rent charge, as it is aforesaid of rent secke. And two causes be of disseisin of rent secke: that is to say, Inclosure & Denier. And yet it semeth that there is another cause of disseisin of all the three rents aforesaid, that is, when the Lord is going to the land holden of him for to distrain for the rent being behind, the tenant hearing this, encountreth him, and forstalleth him the way with force and armes, and menaceth him in such forme, that he dare not come to the Land to distraine for his rent behinde, &c. for doubt of death, or bodily hurt, this is a disseisin, for this, that the Lord is disturbed of the meane whereby he ought to come to his rent. And so it is if by such forestalling and menacing, he that hath rent charge, or rent secke is forestalled, or dare not come to the land to aske the rent behind.

The third Booke.

Parceners.

PArceners bee in two manners: that is to say, Parceners after the course of the Common Law, and Parceners after the Custome. Parceners after the course of the Common Law, bee where a man or woman is seised of certain lands or tenements in Fée simple, or Fée taile, & hath none issue but daugh-

daughters and dyeth, & the tenements descend to the daughters, & the daughters enter into the lands and tenements so to them descēded, then they be called Parceners, and be but one heire to their ancestor, and they be called Parceners, for this, that by the writ that is called Breue de participatione facienda, the law will constraine them that Participation shall bee made amōg them, and if there be 2. daughters to whom the land descendeth, then they be called two parceners, and if they be 3. daughters, they be called 3. parceners, and 4. daughters, 4. parceners, and so forth. And if a man seised of lands in Fée simple, or fée taile, die without issue of his body, & the tenemēts descend to his sisters, they be parceners as is aforesaid. In the same maner it is, where he hath no sisters, but the land descendeth to his Aunts, they be parceners. But if a man hath but one daughter, she may not be said parcener, but daughter and heire. And it is to wit, that partition betwaen parceners may bee made in diuers maners: One is, when they agrée to make partition, and make partition of the tenemēts, as if there be 2. parceners, to diuide betwéen thē the tenement in 2. parts, euery part by himselfe in seueralty of euen value, & if there be 3. parceners, to diuide the tenements in 3. parts in seueralty. And other partition there is to chuse by agreement betwéen them, certaine of their friends to make the partition betwéene thē of the lands & tenements in the forme aforesaid.

And in such cases after such partitions the eldest daughter shall chuse first one of the parts so divided, which shee will haue for her part. And then the second daughter after her another part, &c. if it so be that there bee many Sisters: if it be not that they bee otherwise agreed betweene them, for it may be agreed betweene them, that one of them shall haue such Tenements, and an other such tenements &c. without any such first Election, and the part that the elder sister hath, is called in Latine Enitia pars. But if the Parceners agree that the elder sister shal make partition of the tenements in the forme aforesaid, & if shee doe, then it is said that the elder sister shal chuse the last part after each of her other sisters. An other partition and allotting there is: as if there be 4. Parceners, and after such partition made of the lands, euery part of the land is by it selfe written in a little scrowle, & it is couered all in Ware, in manner of a little ball, so that no man may see the scrowle, then are the foure balls of Ware put in a Bonet, to keepe in the hands of an indifferent man, and then the elder daughter first shall put her hand in the bonnet, which shal take a ball of Ware, and the scrowle within the same ball for her purparte. And then the second sister shall put her hand in the bonet, and shal take another. And so then the third sister the third ball &c. And in this case it behoueth each of them to hold them to their chance and allotment.

Also

Also another partition there is, as if there be foure Parceners, and they will not agree that partition shalbe made betwen them, then one of thē may haue a writ de Participatione facienda against the other three sisters, or two may haue a writ of Participatione facienda against the other, or they three against the 4. at their election, and when iudgement shal be giuen vpon such a writ, the iudgement shall be such, that partition shal be made betweene the parties, and the Sheriffe in his proper person shal go to the Lands and Tenements &c. and there he by the oath of xij true men of his bayliwicke &c. shall make partition betwen the parties, the one part of the same lands shal be assigned to the plaintife, or to one of the plaintifes, and another part to another &c. not making mention in the iudgement of the eldest sister more than of the yongest, and of the partitiō that he hath thus done, he shall make notice to the Iustices &c. vnder his seale, and the Seales of the xij. &c. And so in this case may you see, that the elder sister shall not haue the first election &c. But the Sheriffe shal assigne the part that she shall haue &c. and it may bee that the Sheriffe will assigne the first part to the yonger sister, & the last part to the elder.

And note well, partition by agreement betweene Parceners may by the Law bee made among them, as well by word without deede, as by deed.

Also, if two meales descend to two Parceners,

ceners, and the one meale is worth by yeare xx.s. and the other but x.s. by yeare, in this case partition may be made betweene them in such forme, that the one Parcener shal haue the one meale, and the other Parcener shall haue the other meale, and she that shall haue the meale of xx.s. and her heires shall pay a yerely rent of v.s. issuing out of the same meale to the other Parcener, and to her heires for euer, because that euery of them shall haue euen in value, & such partition made, is good enough, and the same Parcener that shall haue the rent of v.s. & her heires may distraine for the rent of common right in the same meale of the value of xx.s if the rent of v.s. be behind at any time in whole hands soeuer the same meale commeth, though there was neuer writting made of it betweene them. In the same manner it is of partition of all maner of Lands and tenements &c. where such rent is reserued to one, or to diuers Parceners vpon such partition &c. but such rent is not rent seruice, but rent charge, of common right had and reserued for egalty of the partition. And note well that none be called Parceners by the Common Law, but women or the heires of women, and which come by Lands and Tenements by descent, for if sisters purchase lands or Tenements, of this they be called Iointenaunts and not Parceners. Also if two parceners of Land in fee simple make partition betweene them &c. And the part of the one valueth

valueth much more then the part of the other, if they were at the time of partition of full age, that is to say, of xx. yeares, then they alway shall abide and never be defeated: But if the Tenements whereof partition is made, be to them in fée taile, and the part that the one hath is much better in yerely value then the part of the other, howbeit that they be excluded during their lines to defeate the partition, yet if the parcener that hath the lesser part in value hath issue and dyeth, the issue may disagree to the partition, & enter, & occupy in common that other part that is allotted to her Aunt, & so the Aunt may enter and occupie in common the other part allotted to her Sister, as if no partition thereof had beene made &c.

Also, if two Parceners of tenements in fée take Husbands, and they and their Husbands make partition betweene them, if the part of the one be lesse in yerely value then the part of the other, during the lines of the Husbands the partition shal be in his force and strength: yet after the death of the Husband the wife that hath the lesse part may enter in her sisters part as it is aforesayd, & defeat the partition: But if the partition so made betweene them were such, that euerie part at the time of allotment were egall of yerely value, then it may not after be defeated in such cases.

Also, if there be two parceners, & the ponnger of them be within the age of xxi. yeares, & partition is made betweene them, so that the

part that is allotted to the younger, is lesse in value than the part of the other: In this case the ponger during the time of her nonage, and also when she cõmeth to full age of xxj yeares may enter in the poztion to her sister allotted &c. and defeat the partition: But such a parcener ought to take heede when shee commeth to full age, that she ne take to her owne vse, all the profits of the tenements to her allotted, for by that she agreeth to the partitiõ at such age, in which case the partition shall stand and abide in his force and strength &c. but peradventure the profits of the halfe she may take, leaving the profits of the other halfe, to her Sister &c. It is to wit, that when it is said, males and females be of full age, that shall bee vnderstood of the age of xxj. yeares: for if any feoffement or graunt, release, confirmation, obligation, or any other writing before any such age bee made by any of them &c. or that any within such age bee Baptise or Receiued with any man &c. all serueth for nought & may be avoided. Also a man before such age shall not be sworne in no Jurie, nor no inquisition.

Also if tenements bee given to a man in the tayle, which hath no much land in Fee simple, and hath issue two daughters and dyeth, and the daughters make partition betweene them, so that the lands in fee simple be allotted to the younger daughter, in allowance of the Tenements tayled, allotted to the elder daughter, if after such partition the younger daughter alie-

alieneth the Land in Fee simple to another in Fee, and hath issue a sonne, or a daughter, and dyeth, the issue may enter in the Tenements tayled, and them hold in purparty with their Aunt, and this is for two causes: One is for that that the issue may haue no remedy of the Land alened by the mother, for that the land was to her in fee simple, and insomuch as he is one of the heires in the tayle, and hath nothing recompenced of that that to him belongeth of the tenements tayled, it is reason that he haue his purpartie of the land in tayle, and namely when such Partition maketh no discontinuance of the tayle, as shalbe said hereafter in the chapter of Discontinuance. But the contrary is holden M. 20. H. 6. fo. 13. that is to say, that he may not enter vpon the parcener that hath the land tayled, but is put to his suite by writ of Formedon. Another cause is, for that it shal be counted the folly of the elder sister, that shee would agree to the partition, where shee might haue had halfe the land in Fee simple, & halfe the tenements in the tayle for purparty, and so to be sure without damage &c.

Also if a man seised in a plough land by iust title, disseiseth an infant within age of another plough land, & hath issue two daughters, and dieth seised of both those plough lands, the infant then being within age, and the daughters enter & make partition, & the one plough land is allotted for the purparty of the one, as perteine to the yonger sister in allowāce of the other

plough

plough land which is allotted to the purparty of the other, so that after the Infant entreth in the plough land of the which he was disseised, vpon the possession of the parcener that hath the same plough land, then the same parcener may enter into the other plough land that her sister hath, and holdeth in parcenary with her: But if the ponger sister alien the same plough land to another in fée simple before the entrie of the Infant, and after the Childe entreth vpō the possessiō of the alienee, then she may not enter into the other plough land, for this, that by her alienation she hath vtterly dismissed her selfe to haue any part of the tenements as parcener: But if the ponger Sister before the entrie of the Infant make thereof a Leale for terme of yeares, or for terme of life, or in fée taile, sauing the reuersion to her, and after the Childe entreth, there peraduenture it is otherwile, for this, that she dismisseth not her selfe of all that that was in her, but hath reserued to her the reuersion and the fée simple &c.

Also, if there be three or foure Parceners that make partition between them, if the part of the one parcener be defeated by such lawful entrie, they may enter and occupie the other Lands of all the other parceners, and compell them to make new partition of the other lands betweene them &c.

Also, if there bee two Parceners, and the one taketh a Husband, and the Husband and the

the wife haue iſſue betweene them, & the wife dieth, and the husband holdeth him in the halfe as tenant by the curteſie: In this caſe ỹ parcener that ſurmiueth, and the Tenant by the curteſie may wel make partition betweene thẽ &c. And if the tenant by curteſie will not agree to make partition, then the parcener that ſurmiueth may haue a writ de Participatione facienda &c. and compel him to make partition. But if the tenãt by the curteſie will haue partition betweene them, & the parcener that ſurmiueth will not haue it, then the tenaunt by the curteſie ſhal haue no remedy for to haue partition: for he may not haue a writ de Participatione facienda, for this that he is not parcener for ſuch a writ lyeth for Parceners onely. And ſo may ye ſee that the writ de Participatione facienda lieth againſt tenant by the curteſie, and yet himſelfe may not haue ſuch a writ.

Parceners by Cuſtome.

PArceners by the Cuſtome be where a man ſeiſed in fee or fee taile of lands or tenemẽts that be of the tenure called Gauelkind within the Shire of Kent, & hath iſſue diuers ſonnes and dyeth, ſuch Lands and Tenements ſhall deſcend to all the Sonnes by the cuſtome, and they euerly ſhall inherite and make partition betweene them by the cuſtome as females doe, and a writ de Participatione facienda lyeth in this caſe as betweene females, but

it behoueth in the declaration to make mencion of the custome. Also such custome is in other places in England. And also such custome is in North Wales.

Also there is another Partition that is of another nature, and in another forme than any of the partitions aforesaid: As a man seised of certaine Lands in Fee simple hath issue two daughters, and the elder is married, and the father giueth parcell of the same lands to the husband with his daughter in franke mariage, and dyeth seised of the remnant, the which remnant is of more greater value by yeare than be the Lands giuen in franke mariage, in this case the husband and the wife shall haue nothing for their part of the sayd remnant, but if they will put in their lands giuen in franke mariage in hotchpot with the remnant of the Land with her Sister, and if they will not doe so, then the younger Sister may occupy the same remnant, and take to her the profites onely. And it seemeth that this worde Hotchpot is in English a pudding, for in such a pudding is commonly put not one onely thing, but one thing with another, and for this it behoueth in such case to put the Lands giuen in Franke marriage with the other Lands in Hotchpot, if the husband and the wife will haue any thing in the other remnant &c. This word Hotchpot is but a terme of similitude, and is as much to say, as to put Lands giuen in Frank marriage.

age, and other lands in Fe simple &c. together, and this is to such intent to accompt the value of all the lands, that is to say, of the lands giuen in Frankemariage, & the remnant that was not giuen, and then partition shall be made in this forme that ensueth. As put case that a man is seised of xxx. acres of Land in Fe simple, euery acre in value xij. pence by the yeare, which hath issue two daughters, and the one is couert baron, and the father giueth x. acres of the xxx. acres to the husband with his daughter in Frankemariage and dyeth seised of the remnant, then the other sister shall enter into the remnant, that is to say, in the xx. acres, and shall occupie it to her owne vse, except the husband and the wife will put their x. acres giuen to them in frankemariage with the other xx. acres in Hotchpot, that is to say, together, and then when the value is knowne of euery acre, that is to say, euery acre is yerely worth xij. d. then the partition shall be made in such forme, that is to say, that the husband & the wife shall haue aboue the x. acres giuen to them in frankmariage v. acres in seueralty of the xx. acres, and the other sister shall haue the remnant, that is, xv. acres of the xx. acres for her part, so that accompting the x. acres that the husband and the wife had in Frankmarriage, and the other fiue acres of the xx. acres, the husband and the wife haue as much in yerely value as the other sister hath, and so alwayes vpon such partition the Landes

giuen

giuen in frankmariage, abide to the doners, or to the heires, &c. after the forme of the gift, &c. For if the other parcener should haue any thing of this that is giuen in Frankmariage, of this should follow an inconuenience, and a thing against reason, which the law will not suffer, &c. And the cause why that Landes giuen in frankmariage shalbe put in hotchpot, is this, that when a man giueth lands & tenements in frankmariage with his daughter, or with his other cosin, it is to be vnderstood by the Law, that such gift made by such words Frankmariage, is an aduaunccment of his daughter, or of his cosin, and namely when the donor and his heires shall not haue any rent or seruice of him, except fealtie vntill the fourth degree be passed &c.

And for such cause the Law is that she shal haue nothing of the other lands & tenements descended to the other parceners &c. if she will not put the tenements giuen in frankmariage in hotchpot, as is aforesayd, and if shee will not put the lands giuen in Frankmarriage in hotchpot, then shee shall haue nothing in the remnant, for this that it shall be vnderstood by the Law, that she is sufficiently aduaunced, to which aduancement shee agreeth and holdeth her selfe contented.

The same Lawe is betweene the heires of the Doners in Frankmariage and the parceners &c. if the Doners in Frankmariage die before their auncestors, or before such par-

tition

tition, &c. as to put in Hotchpot, &c.

And note well, that gift in Frankmarriage was by the Common Law, before the Statute of Westminster the second, and alway after so hath beene vsed and continued, and so forth.

Also such putting in hotchpot, &c. is where the other lands or tenements that were not given in frankmarriage descend from the donor in frankmarriage only, for if the lands descend to the daughters by the father of the donor, or by the mother of the donor, or by the brother of the donor, or other auncestors, and not by the donor, &c. there it is otherwise, for in such case shee to whom such gift in Frankemarriage is made, shall have her part as if no such gift in Frankmarriage had beene made, for this, that shee was not aduaunced by him, &c. but by an other.

Also, if a man seised of xxx. acres of Land, every acre of euen yearely value, having issue two daughters, as is aforesaid, and giueth of this to the husband of the daughter xb. acres in frankmarriage, and dieth seised of the other xb. acres, in this case that other sister shal have the fifteen acres so descended to her only, & the husband and the wife shall not put in such case the xb. acres to him giuen in Frankemarriage in Hotchpot, &c. for this that the Tenements giuen to him in Frankmarriage be of as good yearely value as the other lands descended, &c. For if the landes giuen in Franke marriage were

were of as euen value as the remnant, or of more value, then in vaine and to none intent such lands giuen in Franke marriage shall be put in hotchpot &c. for this that she may haue nothing of the other lands descended, &c. For if she should haue any parcel of the other lands descended, then should she haue more in perely value then her sister, &c. which the Law will not &c. And as it is said in the cases aforesaid, of two daughters, or two parceners, in the same manner, and in like case is, where there bee moe sisters, after that as the case and the matters be, &c.

And it is to wit, that lands and tenements giuen in Franke marriage, shall not be put in hotchpot, but with the lands descended in Fee simple, for of lands descended in Fee taile, partition shalbe made as if no such gift in Frank marriage had been made. Also no lands shall be put in Hotchpot with other, but lands that be giuen in Franke marriage only. For if any woman haue any other lands or tenements by any other gift in the tayle, shee shall neuer put such lands so giuen in hotchpot, &c. but she shal haue the part of the remnāt, descended &c. that is as much as the other parcener shall haue of the same remnant.

Also an other Partition may bee made betweene Parceners, that varieth from the partitions aforesaid: As if there be three Parceners, & the youngest would haue partition, and the other two would not, but will hold in par-

ceners

cenarie that that to them belongeth without partition: In this case if one part be allotted in seuerality to the ponger sister after that that thee ought to haue, then the other may hold the remnant in parcenary, and occupy in common without partition, if they will, and such partition is good enough And if after the elder and middle parcener wil make partition between them of that that they held, they may well doe so when they please. But where partition shalbe made by force of a writ de Participatione facienda &c. there otherwise it is, for there it behoueth that euery parcener haue his part in seuerality &c. More shall be said of Parceners in the Chapter of Iointenants, and also in the Chapter of Tenants in common.

Iointenants.

IOyntenants be, as a man seised of certaine lands or tenements, &c. and thereof hath infeoffed, two, or three, or foure, or more, to haue and to holde to them and to their heires, or to haue and to holde to them for terme of their liues, or for terme of an others life, by force of which feoffement they be seised, such be Iointenants.

Also, if two or three disseise an other of any Lands or Tenements to their owne vse, then the disseisors bee Iointenants: But if they disseise another, to the vse of one of them, then bee they no Iointenants, but he to whom the

ple of the disseisin is made is sole tenant, and the other haue nothing in the tenancie, but be called coadiutors to the disseisin &c.

And note well, that disseisin is properly where a man entreth into any Lands or tenements, where his entrie is not lawfull, & putteth him out that hath the franketenement &c. And it is to wit, that the nature of iointenancie is, that he that suruiueth shall haue only the whole tenancie, after such estate as he hath if the iointure be continued &c. As if three iointenants be in fee simple, & the one hath issue & dieth, yet they that suruiue shall haue the tenements whole, and the issue shall haue nothing, and if the second iointenant haue issue and dy, yet the third that suruiueth shal haue the tenements whole, and shal haue them in fee simple to him and to his heirs. But otherwise it is of Parcenars, for if three parceners be, & before any partition the one hath issue and dieth, that that to her belongeth shall descend to her issue, and if such a parcener die without issue, then that that to her belongeth shal descend to her coheires, so that they shal haue this by descent, and not by the suruiuor as Iointenants haue &c. And as the suruiuor holdeth place among Iointenants &c. in the same manner it holdeth place among them that haue ioynt estate or possession with others of chatels real or chatels personall. As if a lease of lands or tenements be made to many for term of years, hee that suruiueth of the lessees shall haue the tene-

tenements whole to him during the terme by force of the same lease. And if an house, or other chattell personall bee given to many men, hee that surviueth shall haue them to himselfe.

In the same maner it is of debts & duties &c. For if an obligation bee made to many for one dutie, he that surviueth shall haue all the debt, and so it is of all other covenants & contracts

Also some iointenants may bee & may haue ioynt estates, and be iointenants for terme of their lives, and yet they haue severall inheritance: As if lands be given to two men, & to the heires of their two bodies ingendred: In this case the Donees haue ioint estate for term of their two lives, and they haue severall inheritance: For if the one of the Donees haue issue and dye, the other that surviueth shall haue all by the survivor for terme of his life. And if he that survieth hath also issue and die, then the issue of the one shall haue the halfe of the land, and the issue of the other shall haue the other halfe of the Land, and they shall hold the land betweene them in common, and bee not iointenants, but tenants in common. And the cause that such Donees in such cases haue iopnt estate for terme of their lives, is this, for this that at the beginning Landes were given to them two, which wordes without more saying, made a iopnt estate to them for terme of their lives. For if a man will let land to another by deed, or without deed, not making mention what estate hee hath, and of this maketh

tinuerie of seisin: In this case the lessee shall haue Estate for terme of his life, and so in so much that the lands were giuen to them, they haue a ioint estate for terme of their liues. And the cause why they haue seuerall inheritance is this, insomuch that they cannot by possibilitie haue an heire betweene them ingendred as a man and a woman may haue &c. then the law will that their estate and their inheritance shal be such, as reason will after the forme & effect of the words of the gift, and that is to the heires that the one ingendreth of his body by any of his wiues, and the heirs that the other ingendreth of his bodie by any of his wiues &c. So it behoueth by necessitie of reason, that they shall haue seuerall inheritances. And in such case, if the issue of one of the doners after the death of the doners die, so that he hath no issue aliue of his bodie ingendred, then the donour or his heires may enter in the halfe as in his reuersion, though the other of the doners hath issue aliue &c. And the cause is, for so much as the inheritance is severed &c. the reuersion in the law is severed &c. and the furtuitour of the issues of the other shall hold no place to haue the whole. And so as it is said of males, in the same manner it is where land is giuen to two females, and to the heires of their two bodies begotten.

Also if lands be giuen to two females, and to the heires of one of them, this is a good Iointure, and the one hath a freehold, and the other

other hath fee simple, & if the that hath the fee dye, the that hath the freehold shall haue the whole by the survivor for terme of life. In the same maner it is where tenements be given to two, & to the heires of the bodie of one of them ingendred, the one hath freehold, and the other fee tayle. Also if two Iointenants be seised of estate of fee simple, and the one granteth a rent charge by his deed to an other out of that that to him belongeth &c. In this case during the life of the grantor, the rent charge is effectual. But after his decease the rent charge is void as to charge the land, for that he that hath the land by the survivor, shall hold all the land discharged: And the cause is for this, that he that surviueth claimeth to haue the land by the survivour &c. and not by descent of his fellow &c. But otherwise it is of Parceners, for if there be two Parceners of tenements in fee simple, and before any partition the one chargeth that that to him belongeth by his deed, with a rent charge &c. and dieth without issue, & that that to him belongeth, descendeth to the other Parcener, In this case the other Parcener shall hold the land charged &c. for this that he commeth to the halfe by descent as heire &c.

Also, if there be two Iointenants in fee simple within a Borough where the lands and tenements within the same Borough be deuisable by Testament, if the one of the said Iointenants deuise that, that to him belongeth by Testament &c. and dye, this deuise is

boyde. And the cause is this, that no deuise may take effect but after the death of the deuisor. And for this that by his death all the land incontinent commeth by the law to his fellow that survyueth, by the survivor, which neither claimeth nor hath any thing in the land by the deuise, but in his owne right by the survivour after the course of the Lawe &c. for this cause such deuise is void.

But otherwise it is of Parceners seised of tenements deuisable in such case of deuise &c. Causa qua supra.

Also it is commonly said, that euery Iointenant is seised of the land that he holdeth iointly &c throughout and by all. And this is as much to say that he is seised by euery parcell, & by all &c. And this is true, for in euery parcell, & by each parcell, & by all the lands & tenements he is iointly seised with his fellowes &c.

And if two Iointenants be seised of certain Land in Fee simple, and the one letteth that, that to him belongeth to a stranger for terme of xl. yeares and dyeth within the terme: In this case after his decease the lesse may enter and occupie the halfe to him letten during the terme &c. though the lesse neuer had possession of it in the life of the lessor, by force of this lease &c. And the diuersitie betweene the case of the grant of a rent charge & this case is this, for in the graunt of a rent charge by a iointenant þ tenements abide alway as they were before, without that, that any hath any right to haue par-

parcell of the tenements but himselfe, and the tenements abide in such plight as they were before the charge &c. But where a Lease is made by a Iointenant to another for terme of yeares &c. incontinent by force of the lease the lessee hath right in the same land, that is to say, of all that that to his lessor belonged, & to haue that by force of the same lease during his term &c and this is the diuersitie &c.

Also iointenants if they will may make partition betweene them, and the partition is good enough, but they shall not be compelled by the law to do it, but if they will make partition of their proper will and agreement, the partition shall stand in his strength. P. 3. E. 4. See Sta. 31. H. 8. ca. 21. and 32. H. 8. ca. 32.

Also if a ioint estate bee made of land to the husband and the wife, and to a third person, in this case the husband and the wife haue not in the Law in their right but the halfe &c. And the third person shal haue as much as the husband and the wife haue, that is to say, the other halfe &c. And the cause is, for that the husband and the wife be but one person in the law, & be in like case as if the estate bee made to 2. iointenants, where each one hath by force of the iointure the one halfe, and the other the other halfe. In the same manner it is, where an estate is made to the husband & the wife, and to other two men, in this case the husband and the wife haue not but the third part, and the other two men the other two parts &c. Cause

qua supra. More shall be sayd of the matter touching Jointenancie, in the Chapter of Tenants in Common.

Tenants in Common.

TEnants in Common bee they, that have lands and tenements in fée simple, fée taile, or for terme of life &c. which heue such Lands and tenements by seuerall title, and not toynt title, and none of thē knoweth that that is seueral to him But they ought by the law to occupie such lands and tenements in common & vndiuided to take the profits in common. And because that they come to such lands and tenements by seuerall titles, & not by one selfe toint-title, and their occupation & possession shall be by the law among them in common, therefore they be called Tenaunts in Common: as if a man infeoffe two Jointenants in fée, and one of them alieneth that that to him belongeth to another in fée, now the other Jointenant and the alienée be tenants in common, for this that they be seised in such tenements by seuerall titles. for the alienée commeth to the halfe by the feoffement of the one iointenāt, & the other iointenant hath the other halfe by force of the first feoffemēt made to him and to his first fellow, and so they be in by seuerall titles, and by seuerall feoffements &c. And it is to wit, that when it is said in any Booke, that a man is seised in fée, without more saying it shall be vnder-

vnderſtood fee ſimple, for it ſhall not be vnderſtood by ſuch word in fee, that a man is ſeiſed in fee taile, except that there be put thereto ſuch addition, that is to ſay, fee tayle.

Alſo if three Iointenants be, and the one of them alieneth that that to him belongeth to an other in fee: In this caſe the alienee is tenant in common with the other two Iointenants. But yet the other two Iointenants be ſeiſed of the two parts iointly, and of thoſe two parts the ſuruiuour betweene them holdeth place &c.

Alſo if there be two Iointenants in fee, and the one giueth that that vnto him belongeth to an other in the tayle, the donee and the other iointenant be tenaunts in common &c. But if the Lands be giuen to two men, and to the heires of their two bodies ingendred, the donees haue ioint eſtate for terme of their liues, and if each of them haue iſſue and dye, their iſſues ſhall hold in common &c. But if Lands bee giuen to two Abbots, as to the Abbot of Weſtminſter, and to the Abbot of Saint Albons, to haue and to hold to them and to their ſucceſſors, in this caſe they haue incontinent at the beginning eſtate in common, and not ioint eſtate: And the cauſe is for this, that euery Abbot, or other Soueraign of an houſe of Religion, before that he be made Abbot, or Soueraigne, was but a dead man in the law. And when he is made Abbot, he is as a man perſonable in the Law, all onely to purchaſe,

and

and to haue Lands and tenements, and other things to the vse of his house, & not to his own proper vse, as other secular men may. And for this in the beginning of their purchase, they be tenants in common. And if the one of them dye, the Abbot that succeedeth shal not haue all by the survivor, but the successor of the Abbot that dyeth shall hold the halfe in common with the Abbot that surviueth &c.

Also if lands be given to an Abbot and to a secular man, to haue and to hold to thē, that is to say, to the Abbot and his successors, and to the secular man, to him and to his heires, they haue estate in common, Causa qua supra.

Also if lands be given to two men, to haue and to hold, the one halfe to the one and to his heires, and the other halfe to the other and to his heires, they be tenants in common &c.

Also if a man seised of certaine Lands enfeoffeth another in the halfe of the same land, without any speech of allignement or limitation of the same halfe in severaltie at the time of the feoffement, then the feoffee and the feoffor shall hold the parts of the land in cōmon. And in the same maner, as is aforesaid of tenāts in common of lāds or tenements in fee simple or in fee taile, in the same maner may it be said of tenants for terme of life. As if two Jointenants be in fee, & the one letteth to a man that, that vnto him belongeth for terme of life, & the other Joint enant letteth that, that to him belongeth to another for terme of life, these two lessees

lessers be tenants in common for term of their liues &c.

Also if a man let Lands to 2. men for terme of their liues, & the one granteth all his estate of that that vnto him belongeth to another &c. then the other tenant for terme of life, & hee to whom the graunt is made be tenants in common during the time that both lessers be alive.

Also it is to be remembred, that in all other such cases, though that they bee not here expressly named or specified, if they be in like reason, they be in like law.

Also if there be two Iointenants in fee, and the one letteth that, that vnto him belongeth to another for terme of life, the tenāt for terme of life, during his life, & the other iointenant that did not let be tenants in cōmon. And vpon this case a question may rise, as this: That the case that the lessor hath issue and dyeth, ouring the other iointenant his fellow, and ouring the tenant for terme of life, the question may be such, if the reuersion of the half &c. that the lessour hath, shall descend to the issue of the lessor, or that the other iointenant shall haue it by the suruiuour. And some haue said in this case, that the other iointenant shal haue the reuersion by the suruiuor, & their reason is such, when the iointenants were iointly seised in fee simple &c. though the one of them made estate of that that vnto him belongeth for terme of life, and though that hee hath seuered the franktenement of that that to him belongeth by

by the Leaſe, yet hee hath not ſeuered the fee ſimple, but the fee ſimple abideth to him iointly as it was before. And ſo it ſeemeth vnto them that the other Iointenant that ſurmaeth, ſhall haue the reuerſion by the ſurmiuour &c. And other haue ſaid the contrarie, and this is their reaſon, when one of the Iointenants letteth this that to him belongeth to another for term of his life, that by ſuch Leaſe the Frankſtenement is ſeuered from the iointure: And by the ſame reaſon the reuerſion that is dependaunt vpon the ſame frankſtenement is ſeuered frō the iointure. Alſo if the Leſſor had reſerued to him a pearely rent vpon the Leaſe, the leſſour onely ſhould haue had the rent &c. The which is a proofe that the reuerſion is only to him, and that the other hath nothing in the reuerſion &c. And if the Tenant for terme of life were impleaded &c. and made default after default, then the leſſour ſhall be onely of this receiued to defend his right, and his fellow in this caſe in no manner ſhall be receiued: Which proueth that the reuerſion of the halfe is onely in the leſſour. And ſo by conſequence if the Leſſour dye, liuing the leſſee for terme of life, the reuerſion ſhall deſcend to the heires of the Leſſour &c. and not come to the other Iointenant by by the ſurmiuour, Ideo Quære. But in this caſe, if the Iointenant that hath the Frankſtenement haue iſſue and dye, liuing the leſſour & the leſſee, then it ſeemeth that the iſſue ſhall haue the halfe in his demeſne as of

fee

fee by deſcent, for this that the franktenement may not by nature of the iointure be annexed to a reuerſion. And it is certaine, that he that did not let was ſeiſed of the halfe in his demeſne and of fee, and none ſhall haue any iointure in his franktenement, Ergo this ſhall deſcend to his iſſue, Sed quære. But if it be thus, that the Law in this caſe is thus, that if the leſſor dye liuing the leſſee, and liuing the other iointenant that hath the franktenement of the other halfe, that the reuerſion ſhall deſcend to the iſſue of the leſſor, then is the iointure and the title that any of them may haue by the ſurmiſour by right of the iointure, annulled and all vtterly defeated for euer.

In the ſame maner it is, if the Iointenant that hath the Franketenement die, liuing the leſſor and the leſſee, if the law be ſuch that his franktenement and fee that he hath in the halfe ſhal deſcend to his iſſue, then the iointure ſhal be defeated for euer, &c.

And if three Ioyntenants be, and the one releaſeth by his deed to one of his fellowes, all the right that he hath in the land, then hath he to whom the releaſe is made, the third part of the lands by force of the releaſe, and hee & his fellow ſhall holde the other two parts iointly. And as to the third part that he hath by force of the releaſe, hee holdeth the third part with himſelfe and his fellow in common.

And it is to wit, that ſometime a deede of Releaſe ſhall take effect, and ſhall bee in vre to

put

put the estate of him that made the release, to him to whom the release is made, as in the case aforesaid.

And also if a joynt Estate bee made to the husband and his wife, and to a third person, and the third person releaseth his right that hee hath, &c. to the husband, then hath the husband the halfe that the third person had, and the wife of this hath nothing. And if in such case the third release, &c. to the wife, not naming the husband in the release, then hath the wife the halfe that the third person had, and the husband hath nothing of this, but in right of his wife, for this that in such case the release shall inure to put the estate to him to whom the release is made, of all that that belongeth to him that made the release. And in some case a release shall inure to put all the right that hee hath that made the release, to him to whom the release is made. As if a man seised of certaine Lands and Tenements, is disseised by two disseisors, if the disseisee by his deed release all his right, &c. to one of the disseisours, then hee to whom the release is made, shall haue and hold all the Tenements to him onely, and put his fellow out of cuerie occupation of it: and the cause is, for this, that the two Disseisors were seised in the Tenements by wrong of them done against the Law. And when one of them hath the release of him that had right to enter, &c this right in such case resteth in him to whom the re-

lease

releas is made, and in such plight, as if he that had the right had entred and enfeoffed him &c. And the cause is for this, that hee that before had in estate by wrong, that is to say, by disseisin, now by the release hath a rightfull estate.

And in some case a releas shal enure by way of extinguishment and in such case such releas shall helpe the joyntenent to whom the release is not made, as well as him to whom the release is made. As if a man be disseised, and the disseisor maketh a feoffemēt to two men in fee, if the disseisee release to one of ꝑ feoffees in fee by his deed, thē such a releas shal inure to both the feoffees, for this ꝑ the feoffees have estate by the law, that is to say, by the feoffement, and not by any wrong, none to any other.

And in the same manner it is, if the disseisor make a release to a man for term of life, the remainder over to another in fee, if the disseisee release to the Tenant for terme of life, all his right, &c. this releas enureth as well to him in the remainder, as to the tenāt for terme of life &c. And the cause is for this, that the tenāt for terme of life cōmeth to his estate by the course of the Law, and for this the release shall enure and take effect by way of extinguishmēt of the right of him that hath released &c. And by this releas the tenāt for terme of life hath no greater estate then hee had before the release made vnto him, and the right of him that released is all vtterly extinct. And in so much that such re-

release cannot inlarge the estate of the tenant for terme of life, it is reason that the release shall enure to him in the remainder, &c. More shall bee sayd of Releases, in the Chapter of Releases.

Also if there be two Parceners, and the one alieneth that that vnto him belongeth to an other, then the other Parcener and the alienee be Tenants in common.

Also Tenants in common may bee by title of prescription, if the one and his ancestors, or they whose estate hee hath in the halfe, haue holden in Common, the same halfe with the other tenaunt that hath the other halfe, & with his ancestors, of them whose estate he hath as vndiuided, from time whereof no memory runneth. And diuers other matters may make and cause men to be tenants in common that be not here expressed.

Also in some case tenants in common ought to haue of their possession seuerall actions, and in some cases they shal ioyne in one action: For if there be two Tenants in common, and they be disseised, they ought to haue against the disseisor, two Assises, & not one Assise, for euery of them ought to haue an assise of his halfe &c. and the cause is for this, that tenants in common were seised by seuerall titles: But otherwise it is of Jointenants, for if there be twenty Jointenants, and they be disseised, they shal haue in all their names but one Assise, because that they haue had but one ioint title.

Also

Alſo if there be three Jointenants, and one releaſeth to one of his Fellowes all the right that he hath, and after the other two be diſſeiſed of the whole &c. in this caſe the other ſhall haue ſeuerall Aſſiſes in this forme, that is to ſay, they ſhall haue in both their names one Aſſiſe of the two parts &c. for this that they held the two parts iointly at the time of the diſſeiſin: And as to the third part, he to whom the releaſe is made, ought to haue thereof an Aſſiſe in his owne name, for this, that as to the third part he is Tenant in common &c. for this, that he came to the third part by force of the releaſe, and not onely by force of the iointure.

Alſo, as to ſue actions that touch the realty, there is diuerſitie betweene parceners that be in by diuers deſcents, and tenants in common. For if a man ſeiſed of certaine lands in fee, haue iſſue two daughters and dy, and they enter &c. and each of them haue iſſue a ſonne, & dieth without partition made betweene them, by which the one halfe deſcendeth to the ſonne of the one parcener, and the other halfe deſcendeth to the ſonne of the other parcener, & they enter and occupy in common, and be diſſeiſed: in this caſe they ſhal haue in their two names one Aſſiſe, and not two Aſſiſes: and the cauſe is, that though they come in by diuers deſcents &c. yet they be Parceners, and a writ de Participatione facienda lieth betweene them, and they be not Parceners, hauing regard or

respect onely to the seisin and possession from their mothers, but they be parceners, hauing more respect to their estate that descended fro their grandfather to their mothers: For they may not bee parceners, where their mothers were not parceners before, &c. And so to such respect and consideration, that is to wit, as to the first descent, that was to their mothers, they haue a title in parcenary, the which maketh them parceners: And also they be but as one heire to their common Ancestor, that is to say, to their Grandfather, from whom the land descended to their mothers: And for these causes before partition betweene them, &c. they should haue one Assise, though they come in by seuerall descents, &c.

Also, if there be two tenants in common of certaine landes in Fee, and they giue the same land to another man in the taple, or let it to another man for terme of life, yelding an annuitie, or certaine rent, and a pound of Pepper, or an Hawke, or an Horse, and they bee seised of these seruices, and after all the Rent is behind, and they distraine for it, and the Tenant maketh rescous: In that case, as to the rent and the pound of Pepper, they shall haue two Assises: And as for the Hawke, & the Horse, but one Assise. And the cause why they haue two Assises, as the rent and the pound of pepper, is this, in so much that they were Tenants in common by seuerall titles, and when they made a gift in the taple, or leale for terme

of

of life, &c. leuing to them the reuerſion, and yelding to them certaine rent, &c. Such reſeruation is incident to their reuerſion. And for this that their Reuerſion is in common, and by ſeuerall titles, as their poſſeſſion was before, the rent and other things that may bee ſeuered and were to them reſerued vpon the gift, or vpon the Leaſe, which bee incident by the Lawe to the reuerſion, ſuch things ſo ſeuered were of the nature of the Reuerſion, which reuerſion is to them in common by ſeuerall titles.

And it behoueth that the rent of the pound of Pepper, which may bee ſeuered be to them in common by ſeuerall Titles. And of this they ſhall haue two aſſiſes, and euery of them in his Aſſiſe ſhall make his plaint of the halfe of the rent, and of the halfe of the pound of Pepper, &c.

But of the Hauke ꝛ the Hozſe which cannot be ſeuered, they ſhall haue but one Aſſiſe, for a man may not make a plaint in Aſſiſe of the halfe of an Hauke, or the halfe of an Hozſe &c. In the ſame maner it is of other rents and ſeruices that tenants in cõmon haue in groſſe by diuers titles.

Alſo, as to Actions perſonals, Tenants in common ought to haue ſuch actions perſonals ioyntly in all their names, that is to ſay, of Treſpaſſe, or of offences that touch their Tenements in common: as of breaking of their Houſes, breaking of their cloſes and

paſtures, waſting & defouling of their graſſe, cutting of their wood, & to fiſh in their ponds, and ſuch other: In this caſe tenants in common ſhall haue one action ioyntly, and recouer ioynt dammages, becauſe that the action is in the perſonalty, and not in the realty.

Alſo, if two tenants in common make a leaſe of their two tenements to another for terme of yéares, yéelding vnto them yéerely a certain rent, if the rent be behind, &c. the tenants ſhall haue one action of Debt againſt the leſſee, and not diuers actions, for that the action is in the perſonaltie.

Alſo tenants in common may make partition betweene them if they will, though they ſhall not bee compelled by the Law. But if they make partition betweene them by their agreement and aſſent, ſuch partition is good enough, as it is adiudged in the booke of Aſſiſes, P. 3. E. 4.

Alſo as there be tenants in cõmon of lands or tenements, &c. as is aforeſaid: In the ſame maner there be tenãts in common of chattels reall, and chattels perſonall. As if a Leaſe be made of certaine lands to ij. men for terme of xx. peres, & when they be thereof poſſeſſed, the one of the leſſees granteth that that vnto him belongeth during the terme to another, then he to whom the grant is made, and the other ſhal hold and occupy in common.

Alſo, if two Joyntenants haue the ward of the bodie and of the landes of a childe within age,

age, and the one of them graunteth to another that that vnto him belõgeth of the same ward, then the grantee & the other that granteth not, shall haue & hold it in common &c.

In the same manner it is of chattels personals: As if two haue a ioint estate by gift or by buying of an Horse, or an Oxe &c. the one of them graunteth that that to him belongeth of the same Horse, or Oxe &c. Then the graunter and he that granteth not, shall haue & possesse such chattell personall in common &c. And in such cases where diuers persons haue chattels reals or personals in common, and by diuers titles, and one of them dye, the other that suruiueth, shall not haue that by the suruiuor. But the executors of him that dyeth shall hold and occupy that with him that suruiueth, as their testator did or ought in his life &c. for this that their titles & right in this case were seuerall.

Also, in this case aforesayd, if two haue estate in common for terme of yeres, & the one occupy all and put the other out of his possession and occupation: then shall he that is put out of occupation, haue against the other a writ de Ejectione firmæ for the halfe against the other. In the same maner it is where two hold the ward of Lands or Tenements during the nonage of a childe, if one put out the other of his possession, he that is out shal haue a writ of Ejectment de garde of the halfe, for this that those thinges bee Chattels reals,

and may be apportioned and severed &c. But no such action of trespas, that is to say, Quare clausum suum fregit, & herbam suam conculcauit & consumsit &c. and such like actions the one may not have against the other, for this that each of them may enter and occupie in common &c. throughout and by all the tenements which they hold in common. But if two be possessed of chattels personals in common by diuers titles, as of an horse, or an oxe, or a cow, if the one take it all to himselfe out of the possession of the other, the other hath none other remedy but to take this of him that hath done to him the wrong for to occupy in common when he may for his time.

In the same manner it is of Chattels reall that may not be severed, as in ꝑ case aforesayd: Two be possessioners of a ward of the body of a child within age, if one take the child out of the possession of the other, the other hath no remedy by any action by the Law, but to take the child out of the others possession when he seeth his time &c.

Also, when a man in pleading will shew a deed of Feffement made vnto him, or a gift in the taple, or a leafe for term of life of any lands or Tenements, there hee shall say by force of which Feffement, gift, or leafe, hee was seised &c. But where a man will plead a Leafe or grant made vnto him of a chattell reall or personall, there he shall say by force of which hee was possessed.

More

More shall be said of Tenants in common in the Chapter of releases, and Confirmations.

Estates vpon Condition.

ESTates that men haue in lãds or tenemẽts vpon condition, be in 2. maners: that is to say, they haue estate vpon condition in deed, or vpon conditiõ in law. Vpon condition in deed, is as a man by deed indented infeoffeth another in fee, reserving to him and to his heires yerely a certaine rent, payable at one feast, or at diuers feasts by the yere, vpon condition, that if the rent be behind &c. that it shalbe lawfull to the Feoffor and to his heires to enter into the Lands or Tenements &c. Or if the land be alienet to another in Fee, to yeld vnto him certaine rent &c. And if it hap that the rent be behind by a week after any day of payment of it, or by a Moneth, or by a halfe yeare after any day of payment, that then it shalbe lawful to the Feoffor and to his heirs to enter &c. In this case, if the rent be not payed at such a day, or before such a time limited & specified within the Condition comprised in the Indenture, then may the Feoffor or his heires enter into such Lands or Tenements, and them in his first estate to haue and to hold, and of this to put the Feoffee cleane out: And it is called Estate vpon condition, for this, that the

estate of the feoffee is defeasible, if the condition be not perfourmed.

In the same maner it is if Lands be given in the taple, or let for terme of life, or for terme of yeares, vpon such condition &c. But where a feoffement is made of certaine lands, reserving certaine rent vpon such condition, that if the rent be behind, that it shal be lawfull to the feoffor and his heires to enter, and the land to hold till they be satisfied or payed of their rent behind &c. In this case if the rent be behind, and the feoffor and his heires enter, the feoffee is not excluded cleane out, but the feoffor shall haue and hold the land, and take the profites till that he bee satisfied of the rent behind &c. And when he is satisfied, the feoffee may reenter in the same Land, and hold it as he did before, for in such case the feoffor shall haue it but in maner for a distresse, in the meane time till he be satisfied of the rent &c. though he take the profits in the meane time.

Also, diuers words among other there be, that by vertue of themselfe make estate vpon condition: One is, this word of Condition, as A. enfeoffed B. of certaine Land, to haue and to hold to the same B. and to his heires vpon Condition, that the same B. and his heires shall pay, or do to be payed to the foresaid A. and to his heires yearely such rent &c. In these cases without any more saying the feoffee hath estate vpon Condition. Also if the Condition were such, Prouided alway, that

the

the aforesaid [illegible] or doe to be payed to the aforesaid A. &c. : Or if they were thus, so that the aforesaid B. pay, or doe to be payed such rent: In these cases without any more saying, the feoffer hath estate but vpon condition, so that if he performe not the condition, the feoffor and his heires may enter &c.

Also, other wordes there bee in a deed that causeth the tenements to be conditionall, as vpon such a Feoffement a rent is reserued to the Feoffor &c. and after it is put in the deed, that if it chance the aforesaid rent to bee behinde in part or in all &c that then it shall bee lawful to the Feoffor and to his heires to enter, and this is a deed vpon condition. But there is diuersitie betweene the wordes (if it chaunce &c.) and the wordes next aforesaid, for this word (if it chaunce &c.) is nought worth to such condition, but if it hath these wordes following, that is to say, that it shall be lawfull to the Feoffor and to his heires to enter &c. But in these cases aforesaid, it needeth not by the law to put such clause, that is to say, that the Feoffor and his heires may enter &c. for this, that they may so doe by force of the wordes aforesaid, because they containe in themselues in the Law a Condition, that is to say, That the Feoffor and his heirs may enter. Yet it is common in all such cases aforesaid, to put such clauses in the deedes, that is to say, if the rent be behinde &c. that it shall be lawfull to the same Feoffour and his

heires

heires to enter &c. And this is well done to that intent for to declare and expres to the lay men that be not learned in the Law, the manner and the condition of the feoffement &c. If a man ſeiſed of land as of frankeneement, lets the ſame land to another by deed indented for terme of yeares, yeelding vnto him certaine rent, it is vſed to bee put in the deede, that if the rent be behind at the day of payment, by a Moneth &c. that then it ſhall be lawfull to the leſſor to diſtraine &c. and yet the leſſor may diſtraine of common right for the rent behind &c. though ſuch wordes neuer were ſet in the deed &c.

Alſo, if a feffement be made vpon ſuch condition, that if the Feoffour pay at a certaine day &c. twentie pounds of money, that then the Feoffour may enter &c. In this caſe the Feffee is called Tenant in Mortgage, that is as much to ſay in French, as Mortgage, and in Latin Mortuum vadium, and in Engliſh, a dead pledge. And it ſemeth that the cauſe why it is called Mortgage, is that it ſtandeth in doubt if the Feoffor will pay at the day limited, ſuch a ſumme or not: And if hee pay not, then the land that is put in pledge vpon condition for the payment of the money, is gone from him for euer, and ſo dead as to the Tenant &c.

Alſo, as a man may make a Feoffement in fee in Mortgage, ſo may a man make a gift in the taple in Mortgage, and a leaſe for terme

of

of life, or for terme of yeares in Mortgage. And all ſuch Tenants be Tenants in Mortgage after the ſtate that they haue in the Lands &c

Alſo, if a Feoffement be made in Mortgage, vpon condition that the Feoffour ſhall pay ſuch a ſumme at ſuch a day &c. as is betweene them by their deede indented accorded and limited, though the Feoffour dye before the day of payment &c. yet if the heire of the Feoffour pay the ſumme within the day to the Feoffee, or proffer him the money, and the Feoffee refuſeth to receiue it, then may the heire enter into the Landes. And yet the condition is, if the Feoffour pay ſuch a ſumme ſuch a day &c. and not making mention in the condition of any payment to bee made by his heire, but for this that the heire hath intereſt of right in the condition &c. And the intent was but that the money ſhould bee payed at ſuch a day ſet &c. and the Feoffee hath no more damage to be paied by the heire, then though he were paied by the Father &c for this cauſe if the heyre pay the money, or tendzeth the money at the day ſet &c. and the other refuſeth it, hee may well enter. But if a ſtranger of his own head that hath no intereſt &c. would tender and pay the money at the day ſet, then the Feoffee is not bound to receiue it &c.

Alſo, it is to bee had in minde, that in ſuch caſe where ſuch lawfull tender of the money

is

is made, and the Feoffee refuſeth to receiue it, wherefore the Feoffor or his heires doe enter &c. then the Feffee hath no remedy to haue the mony by the common law, for this that it ſhall be counted his owne folly that he refuſed the mony when lawfull proffer was made of it vnto him &c.

Alſo, if a feoffement be made with ſuch condition, that if a Feoffee pay to the Feoffor at ſuch a day betweene them limited xx.li. that then the Feffee ſhall haue the land to him and to his heires, and if hee faile to pay the money at the day &c. that then it ſhal be lawfull to the Feoffor, or to his heires to enter &c. And if after, before the day ſet, the Feoffee ſelleth the Land to another, and thereof make a Feoffement vnto him, in this caſe if the ſecond Feffee will tender the ſumme of money at the day ſet to the Feoffor, and the Feoffor refuſeth it &c. then hath the ſecond Feoffee eſtate in the land clerely without condition: And the cauſe is, for that the ſecond Feoffee had intereſt in the condition for ſaluation of his tenancy. And in this caſe it ſeemeth, that if the firſt feoffee after ſuch ſale of Land will tender the money at the day ſet &c. to the Feoffor, that ſhall bee good enough for the ſaluation of the eſtate of the ſecond Feffee: for this, that the firſt Feffee was priuie to the condition, and ſo the tender of any of them is good enough &c.

Alſo if the feffement be made vpon condition, that if the feffor pay a certain ſumme of mony

to

to the Feoffee: that then it ſhalbe lawful to the Feoffor and to his heires to enter &c. In this caſe if the feoffor die before the day of paimẽt, and the heire will tender to the feoffor the money, ſuch tender is void: for this that the time within which the tender ought to be made, is paſt. For when the condition is, that if the Feoffor pay þ mony to the Feoffee, this is as much to ſay, that if the Feoffor during his life pay the mony to the Feoffee &c. And when the feoffor dieth, then þ time of the tender is paſt. But otherwiſe it is where day of payment is limited, and the Feoffor dieth before the day, then may the heire tender the money, as is aforeſaid, for this that the time of the tender was not paſt by the death of the Feoffor. Alſo it ſeemeth in ſuch a caſe where the feoffor dieth before the day of payment, if the executors of the Feoffor tender the money to the Feoffee at the day of payment, the tender is good enough. And if the Feoffee refuſe this, the heires of the Feoffor may enter, &c. And the cauſe is for this, that the executors repreſent the perſon of the teſtator, &c.

And note well, that in all ſuch caſes of condition of payment of a certaine ſum in groſſe, touching lands or tenements, if lawful tender be once refuſed, he that ought to pay the mony, is thereof quited & clerely diſcharged for euer.

Alſo, if the feoffee in mortgage before the day of payment that ſhall be made vnto him make his executors & die, and his heire enter into the land

Land as he ought. It seemeth in this case that the Feoffor ought to pay the money at the day set to the executors, and not to the heire of the Feoffee, for this, that the money at the beginning belonged to the Feoffee in manner as a dutie. And it shall bee vnderstood, that the estate was made because of borrowing of the mony of the Feoffee, or because of an other dutie, and for this the payment shal not be made to the heire of the Feoffee, as it seemeth. But the words of the condition may be such, that the payment shalbe made vnto the heire, as if the condition were that the Feoffor pay to the Feoffee, or to his heires, such a summe at such a day, &c. There after the death of the Feoffee (if hee die before the day limited) then the payment ought to bee made to the heire at the day set, &c.

Also in such case of a Feoffement in Mortgage, a question hath been demanded, in what place the Feoffor is bound to tender the mony to the Feoffee at the day set &c. And some haue said, that vpon the land to holden in Mortgage, for this, that the condition is dependant vpon the land, and they haue said, that if the Feoffor be ready vpon the land, to pay the mony at the least or day set, and the Feoffee bee not at that time there, then the Feoffor is excluded and discharged of payment of the money, for this, that no default was in him. But it seemeth to some men that the law is contrary, and the default is in him: for hee is bound to seeke the Feoffee, if he be then at that time in any maner

of

of place within the Realme of England. As if a man bee bound in an Obligation of xx.li. vpon condition indorced vpon the obligation, that if he pay to him to whom the obligation is made, at such a day ten pound, that then the obligation of xx.li. shall lose his force, and shall bee holden for nought: In this case it behoueth him that made the Obligation to seeke him to whom the obligation is made, if he bee within England, and at the day set, to tender him the sayd x.li. &c. Or otherwise hee forfeiteth the summe of xx li. comprised within the Obligation, and so it seemeth in the other case, &c. And though that some haue sayd that the condition is dependant vpon the land, yet this is not proued that the reliance of the condition to be performed, ought to bee made vpon the land &c. No more then if ꝑ condition were, that if the Feoffor should do at such a day &c. an especiall corporall seruice to the Feoffee, not naming the place where the corporall seruice should be done: In this case the Feoffor ought to doe such corporall seruice at the day limited to the Feoffee, in whatsoeuer place in Englād that the Feoffee be, if he will haue aduantage of the condition, &c. And so it seemeth in that other case. And it seemeth to them, that it shall be more properly said, that ꝑ estate of the land is dependant vpon the Condition, &c. then to say, that the Condition is dependant vpon the land: But inquire, &c.

But if a Feoffement in Fee be made reser-

uing

uing to the Feoffor an annuall rent, and for default of payment a reentrie, &c. In this case it needeth not to the tenant to tender the rent when it is behinde, but onely vpon the Land, for this, that this is a rent going out of the land, which is rent seeke. For if the Feoffor be once seised of his rent, and after hee commeth vpon the land, &c. and the rent is denied him, &c. he may haue an Assise of Nouel disseisin, for though he may enter, because of the condition broken, yet hee may chuse, that is to say, to enter, or to haue an Assise. And so is there diuersitie, as to the tender of the rent that is going out of the Land, & of tender of another summe in grosse, which is not going out of the Land. And therefore it shall be sure and a good thing for them that will make such Feoffement in mortgage, to put and set a special place where the money shall be paid. And the more special that is put, the better it is for the Feoffour. As if A. infeoffe B. to haue to him and to his heires vpon such condition, that if A. pay to B. in the feast of Saint Michaell the Archãgell next comming, in the Cathedrall Church of S. Paul of London, within foure houres next before the houre of none of ỹ same Feast at the rood loft of the North doze within the same Church, or any other certain place within the same Church: that then it shalbe lawful to the foresaid A. and to his heires to enter &c. In such case he needeth not to seeke the feoffee in any other place, but in the place comprised

in

in the Indenture, nor to be there more longer time then the time specified in the same Indenture, for to render or pay the money to the Feoffee.

Also in such case where the place of paiment is limited, the Feoffee is not bound to receiue the payment in none other place, but in ye place so limited: But yet if he receiue the paiment in any other place, that is good enough, and as strong for the Feoffor, as if the receit had bin in the place so limited, &c.

Also in this case of Feffement in mortgage, if ye Feoffor pay the Feoffee an horse, or a cup of siluer, or a ring of golde, or any other such thing in full satisfaction of the money, and the other this receiueth, this is good enough, & as strong as if he had receiued the summe of mony, though the horse, or any of the other things be not the twentith part worth in value of the summe of money, for this, that the other hath accepted in plaine and full satisfaction.

Also if a man enfeoffe an other in Fee vpon condition, that he and his heires shall yeeld to a stranger and his heires a yerely rent of xx. s. and if hee and his heires fayle of payment of this, that then it shalbe lawfull to the Feoffor and to his heires to enter, this is a good condition: And yet in this case, though such a yearely rent bee called an annuall rent, this is not properly a rent: for if it shall be rent, it ought to bee rent seruice, rent charge, or rent seck, and it is none of them, for if the stranger

were ſeiſed of this, and after it were to him denied, hee ſhall neuer haue an Title of this, for this that it iſſueth not out of any Lands, and ſo the ſtraunger hath no remedie, if any ſuch yearely payment bee behinde in this caſe, but that the Feoffor and his heires may enter, &c. and yet if the Feoffor and his heires enter for default of payment, then ſuch rent is gone for euer. And ſo ſuch rent is but a payment ſet to the tenant and to his heires, that if they will not pay this after the forme of the indenture, þ they ſhall leeſe their land by the entrie of the Feoffor or his heires, for default of payment. And in this caſe it ſeemeth that the Feoffee and his heires ought to ſeeke the ſtranger and his heires if they bee in England, becauſe that no place is limited where the payment ſhall bee made, and becauſe that ſuch rent is not going out of any Land, &c.

And here note well two things, one is, that no rẽt that is properly ſaid rent, may be reſerued vpon any Feoffement, gift or leaſe, but only to the Feoffor, or to þ donor, or to the Feoffor, or to their heires, þ in no manner may be reſerued to any ſtrãge perſon. But if a tenãt make a Leaſe by deed indented, reſeruing to the one a certain yeerely rent, that is good enough to him to whom the rent is reſerued, for this that he is priuie to the leaſe, and not a ſtraunger to this, &c. The ſecond thing is, that no entry or reentry (which is all one) may be reſerued nor giuen to any perſon, but onely to the Feoffour

or

or to the donor, or the lessor, or to their heires, and such entrie may not be alened nor graunted to any person. For if a man let Land to another for terme of life by Indenture, yeelding to the lessor & to his heires certaine rent, & for default of payment a reentrie, &c. if after the lessor by a deed grant the reuersion of the land to an other in Fee, and the tenant for terme of life attorneth, &c. if the rent after be behinde, the grantee of the reuersion may distraine for the rent, for this that the rent is incident to the reuersion, but he may not enter into the land and put out the Tenant as the lessor might, or his heires, if the reuersion had been continued in them, &c. And in this case the entry is taken away at all times, for the grantee of the reuersion may not enter, Causa qua supra. See Stat. 32. H. 8 ca. 34. if the Lease be by deed indented. And the lessor nor his heires may not enter, for if the lessor may enter, then he ought to bee in his first estate &c. & that may not be, for this that he hath put from him the reuersion, &c.

Also if there be Lord & tenant, & the tenant make such a lease for terme of life, yeelding to the lessor and to his heires, such yearly rent, and for default of paiment & reentrie, &c. if after the lessor die without heire, during the estate of the tenant for terme of life, by which the reuersion commeth to the Lord by way of Escheat, & after the rent of the tenant for terme of life is behinde, the Lord may distraine the Tenant for the rent behinde, but he may not

enter into the land by force of the condition &c. for this that he is not heire to the Feoffor, &c.

Alſo if land be graunted to a man for terme of yeares, vpon condition, that if he pay to the graunter within 2. yeres xl marks, that then he ſhall haue the land to him and to his heires, &c. In this caſe if the grantee enter by force of the graunt, and after he payeth to the grantor xl. markes within the 2. yeares, yet he hath nothing in the land, but for terme of 2 yeeres, for this that no Liuery of ſeiſin was to him made at the beginning, for if he had had Franktenement a Fee in this caſe, becauſe he hath performed the condition, then ſhould he haue Frãktenement by force of the firſt grant where no Liuerie of ſeiſin was made thereof, which ſhould be againſt reaſon, &c. But if the graunter had made liuery of ſeiſin to the grauntee by force of the graunt, then hath the grauntee the Frankteneement and the Fee vpon the performance of the ſame condition.

Alſo, if lands be granted to a man for terme of fiue yeres, vpon condition that he pay to the graunter within the firſt 2. yeeres xl. markes, that then he ſhal haue Fee, or elſe but for terme of 5 yeres, & liuery of ſeiſin is made to him by force of the grant: Now hee hath Fee ſimple conditionell, &c. and if in this caſe the grauntee pay not to the graunter the xl. markes within the ſame 2. firſt yeres, thē immediatly after the ſame 2. yeres, the Fee and the Frankteneement is and ſhalbe adiudged to the grantor, for this

that

that the grantor may not after the two yeares incontinent enter vpon the graunte, for this that the graunte hath yet title by three yeres to haue and occupie the Land by force of the same graunt. And so for this, that the condition on part of the graunte is broken, and the graunter may not enter, the law shall put the Fee and Franktenement in the grantor: For if the grantee in this case make wast, then after the breaking of the condition &c. and after the two yeres the grantor shal haue his writ of wast, and this is a good proofe that the reuersiō is to him &c. But in such case of feoffements vpon condition where the feoffor may enter lawfully for the Condition broken &c. There the feoffee hath the franktenement before the entrie &c.

Also, if a Feoffement bee made vpon such condition, that the Feoffee shall giue the land to the Feoffor, and to the wife of the Feoffor, to haue and to hold to them and to the heires of their two bodies ingendred, and for default of such issue, to remaine to the right heires of the Feoffour: In this case if the Husband dye liuing the wife, before estate in the tayle made to him, then ought the feoffee by the law to make estate to the wife, as like to the condition, and as like to the intent of the condition as he may make it, that is to say, to let the land to the wife for terme of life without impeachment of wast, the remainder after her decease to the heires ingendred of the body of her

husband & hers, & for default of such issue, the remainder to the right heires of the husband. And the cause why the Lease shall be made in this case to the woman sole without impeachment of wast, is for this, that the condition is, that the estate shalbe made to the husband and his wife in tayle. And if such estate had been made in the life of the husband, then after the death of her husband shee hath estate in the taile sole, which estate is without impeachmēt of wast: and so it is reason, that if after a man may make estate to the intent of the condition &c. that he shall make it &c. thought that she cānot haue estate in the taile as she might haue had, if the gift in the taile had been made to the husband, & to her in the life of her husband &c.

Also in this case if the husband & the wife had issue & die before the gift in the taile made vnto them &c. then ought the Feoffee to make estate to the issue, and to the heires of the Father and mother ingendred, and for default of such issue &c. the remainder to the right heires of the husband &c. And the same Law is in other cases semblable. And if such a Feoffour will not make such estate when hee is reasonably required by them that ought to haue estate by force of the condition &c. then may the Feoffor and his heires enter &c.

Also, if a Feoffement bee made vpon condition, that the Feoffee shall infeoffe many men, to haue and to hold, to them and to their heires for euer, and all they that ought to

haue

haue eſtate, bye before any eſtate made vnto them, then ought the feoffee to make the eſtate to the heires of him that ſurmeth of them, to haue and to hold to him, & to the heires of him that ſurmeth &c.

Alſo if a feffement be made vpon condition to enfeoffe another, or to giue in the taile to an other &c. if the feffee before the performing of the condition enfeoffe a ſtrange perſon, or make a Leaſe for terme of life, then may the Feoffor and his heires enter &c. for this, that hee hath diſabled himſelfe to perform the condition, inſomuch that he made eſtate to another &c. In ſuch maner it is, if the feffee before the condition performed, let the ſame Land to a ſtranger for terme of yeares: In this caſe the feoffor or his heirs may enter &c. for this that the feoffee hath diſabled himſelfe to make eſtate of the tenements according to that that was in the tenements when the eſtate thereof was made vnto him, for if he will make eſtate according to the Condition &c. then may the Feoffee for terme of yeares enter & put out him to whom the eſtate is made &c. and to occupy this during his terme. And many haue ſayd, that if ſuch a feffemẽt be made to a man ſole vpon the ſame Condition, and before that he hath performed the condition he taketh a wife, the the Feoffor or his heire may incontinent enter, for this that if hee haue made eſtate according to the condition, & after dieth, his wife ſhalbe endowed, & may recouer her dowrie by a writ of

Dower &c. And ſo by taking of a wife, the tenements be put in other plite then they were at the time of the Feoffement vpon condition, for this, that no ſuch woman was dowable, nor ſhould be endowed by the law &c.

In the ſame maner it is, if the feffee charge the land by his deed of a rent charge before the performing of the condition, or be bound in a ſtatute Staple, or ſtatute Merchant, that in ſuch caſes, the Feoffor & his heirs may enter, Cauſa qua ſupra. For whatſoeuer commeth to the tenements by the Feffement of the Feffee, then the tenements muſt be lyable, and be put in execution by force of the ſtatute aforeſaid. But when the Feoffor or his heires, for the cauſes aforeſaid haue entred ſo as they ought, as it ſeemeth &c. Then all ſuch things that before ſuch entrie may trouble or incumber the tenements ſo giuen vpon condition, as touching the ſame tenements be vtterly defeated &c.

Alſo, if a man make a deed of Feffement to another, & in the deed is no condition &c. And when the feoffor will make to him liuery of ſeiſin by force of the ſame deed, he maketh liuerie of ſeiſin vpon certaine conditions &c. In this caſe nothing of the tenements paſſeth by the deed, for this, that the condition is not compriſed in the deed, & the feffement is of ſuch force, as if no ſuch deed had bin thereof made &c.

Alſo if a feffement be made vpon ſuch condition, that the feoffee ſhall not alien the land to any man, this condition is void, for this, that when

when a man is infeoffed in Lands or Tenements, he hath power to alien them to some person by the law. For if such condition should bee good, then the condition putteth him out of all the power that the Law giueth, which should bee against reason, and for this such condition is voide. But if the condition bee such, that the feoffee shall not alien to one such, naming his name, or to any of his heires, or his issues &c. or such other like, the which condition taketh not away all the power of alienation of the feoffee &c. then such condition is good.

Also if tenements bee giuen in the taple vpon such condition, that the Tenaunt in the taple, nor his heires &c. shall not alien in Fee, nor in taple, nor for terme of anothers life, but for their owne liues &c. such alienation and condition is good: And the cause is for this, that when he maketh such alienation and discontinuance, he doth contrary to the intent, for which the statute of Westminster the second was made, by which estatute the estates in the taple be ordained, for it is proued by the words comprised in the same estatute, that the intent of the making of the same estatute was, that the will of the donor in such cases should be obserued. And when tenant in the taple maketh such discontinuance, he doth the contrary to that &c. And also in estates in the taple of any Tenements when the reuersion of the fee simple is in another person, when such discontinuance

tinuance is made, then the fee simple in the reuersion, or the Fee simple in the remainder is discontinued, and for that that the Tenant in the taile shall doe no such thing against right, such conditions are good, as is aforesaid &c.

Also a man may giue land in the taile vpon such condition, that if the tenant in the taile or his heires alien in Fee, or in taile, or for terme of anothers life &c. And also, that all the issues comming of the tenãt in the taile be dead without issue, that then it shalbe lawful to the donor and to his heirs to enter &c. and by such way the right of the tayle may be saued after such discontinuance to the issue in the taile if there be any, so that by way of entry of the donor or of his heires, the taile shall not be defeated by such condition, and yet if the tenaunt in the tayle in this case, or his heires make any discontinuance &c. hee in the reuersion or his heires after this that the tayle is determined for default of issue &c. may enter into ỹ land by force of the same condition, and shal not be driuen to sue a writ of Formedon in the reuerter.

Also, a man may not plead in an action, that estate was made in fee, in the taile, or for terme of life vpon condition, but if he vouch a record therof: or shew a writing vnder seale, proouing the same condition, for it is a common erudition and learning, that a man by pleading shall not defeat any estate of franktenemẽt by force of any such condition, vnles he shew the proofe of such condition in writing &c. except it be in

some

ſome eſpeciall caſe: but of chattels reals, as of a leaſe made for terme of yeares, or of graunts of wards made by wardens in chiualrie, and of ſuch other &c. a man may plead that ſuch gifts or graunts were made vpon condition &c. without ſhewing of any writing of condition. And in the ſame manner a man may do of gifts and graunts of Chattels perſonals, and of contracts perſonals &c.

Alſo, though that a man in ſome action may not plead a condition that toucheth a concern. th franktenement without ſhewing of writing thereof, as it is aforeſaid, yet a man may bee holpen vpon ſuch condition by the verdict of xij. men taken at large in Aſſiſe of diſſeiſin, or in ſome other Action where the Juſtices will take the verdict of the twelue Jurors at large. As put the caſe that a man ſeiſed of certaine land in Fee, letteth the ſame land for terme of life without bote, vpon condition to yeild to the Leſſour a certaine rent, and for default of payment a reentrie &c. by force of which the leſſee is ſeiſed as of a franktenement, and after the rent is behinde, by which the leſſour entreth into the land, and after the leſſee arraigneth an Aſſiſe of Nouel diſſeiſin of the land againſt the leſſor, the which pleadeth that he doth no wrong, ne no diſſeiſin, and vpon this the Aſſiſe is taken.

In this caſe the Recognitors of the Aſſiſe may ſay and yeild to the Juſtices their verdict at large vpon all the matter, as to ſay, that the defer-

defendant was seised, and so seised, let the same Land to the plaintife for terme of his life, to yeld to the lessor such annuall rent payable at such a feast, & vpon such condition, that if the rent be behind at any such feast that it ought to be payed, that then it shall be lawfull to the Lessor to enter &c. by force of which Lease the plaintif was seised in his demesne as of franktenement, & after the rent was behind at such a feast, in such a yeare &c. for which the Lessor entred into the land vpon the possession of the lessee, & prayeth the discretion of the Justices, if this be a disseisin done by the plaintif or not. And then for this that it appeareth to the Justices, that this was no disseisin done to the plaintife, inasmuch that, that the entrie of the lessor was lawfull vpon him, the Justices ought to giue iudgement that the plaintife shal take nothing by his writ of Assise. And so in such case the lessor shall be holpen, & yet no writing was euer made of the condition, for as well as the Iurors may haue knowledge of the lease, in the same maner may they haue knowledge of the condition rehearsed in the lease. In the same maner it is of a feoffement in fee, or a gift in the taple vpon condition, though neuer writing were made therof &c. And as it is said of a verdict at large in Assise, in the same maner it is of a writ of Entre founded vpon disseisin, & in all other actions where the Justices will take a verdict at large, there where the verdict at large is made, the nature of the matter is

put

put in the issue. Also in such case where the Enquest may say their verdict at large, if they will take vpon them the knowledge of the law vpon the matter, they may say their verdict generall, as it is put in their charge, as in the case aforesaid, they may well say that the lessor disseised not the lessee if they will, &c.

Also in the same case, if the case were such, that after this that the Lessor hath entred for default of payment, &c. that the Lessee had entred vpon the lessor, and him disseised: In this case if the lessor arraigneth an assise against the lessee, the lessee may barre him of his assise, for he may plead against him in barre, how the lessor that is plaintife made a lease to the defendant for terme of life, saving the reuersion to the plaintife, the which is a good plea in barre, insomuch that hee knowledgeth the reuersion to be to the plaintife, and in this case hee hath no matter to help him, but the condition made vpon the lease, & that he may not plead for that he hath no writing, and insomuch that he may not answere to the barre, hee shall bee barred. And so in this case yee may see, that a man is seised, & he shall haue Assise, and yet if the lessee bee plaintife, and the lessor defendant, hee shall barre the lessee by verdict of the assise. But in this case where the lessee is defendant, if hee will not plead the said plea in barre, but plead no wrong ne disseisin, then the lessor shall recouer by Assise, Causa qua supra.

And because such conditions be most commonly

monly put & specified in deeds indented, some little thing shall be said here (to thee my sonne) of Indẽtures, or of a deed Poll containing cõditions. And it is to wit, ꝑ if the Indenture be bipartite, or tripartite, or quadripartite, all the parts of the Indenture be but one deed in the law, & euery part of the Indenture is of himselfe of as great force & effect, as all the parts together. And the making of Indẽtures is in 2. manners. One is to make them in the third person, an other maner is to make them in the first person. The making of the third person is as in such forme. This Indenture made betwẽn A. of B. of the one part, & C. of D. of the other part, witnesseth, that the foresaid A. of B. hath giuen & granted, & by this present deed indented, hath cõfirmed to the foresaid C. of D. such land, To haue &c. vpon the condition, &c. In witnes wherof the parties beforesaid interchangeably haue put to their seals: Or els thus, In witnes wherof to ꝑ one part of this indẽture remaining with the said C. of D. the foresaid A. of B. hath put to his seale, & to the other part of the said Indenture remayning with ꝑ said A. of B. the said C. of D. hath put to his seale, giuẽ &c. Such indentures are called indẽtures made in the third person, for this that the verbes be in the third person, and such forme of indẽture is the more sure making, for that it is more cõmonly vsed. The making of indentures in the first person is of such forme. To all true Christian people to whom this

pre-

present writing indented shall come, I. of B. greting in our Lord euerlasting. Know ye me to haue giuen & graunted, and by this my present deed indented to haue confirmed to C. of D. such land, &c. Or else thus: Know all men that be present, and them that be to come, that I. I. of B haue giuen & granted, & by this my present deed indented haue confirmed to C. of D. such land &c. to haue &c. vpon the condition following: In witnes wherof as well I the said I. of B. as the foresaid C. of D. to these Indentures interchangeably haue put to our seales: or els thus: In witnes wherof to one part of this Indenture I haue put to my seale, and to the other part of the same indenture the foresaid C. of D hath put to his seale, &c.

And it semeth ỳ such an Indenture made in the first person, to as good in the law as the Indenture made in the third person, when both parties haue thereto put their seales, for in the Indenture made in the third person, or in the first person, if mention be made that the grantor hath set his seale only, & not the grantee, then is the Indenture only the deed of the grantor. But where mention is made that the grantee hath set his Seale to the Indenture &c. then is the Indenture aswell the deed of the grantor, as the deed of the grantee, and thus it is the deed of both, and also euery part of the Indenture is the deed of both parties in such case, &c.

Also if estate bee made by Indenture to a man

man for terme of his life, the remainder to an other in Fee vpon condition, &c. and if the Tenant for terme of life hath set his seale to one part of the Indenture, and after dyeth, and he in the remainder, &c. entreth by force of his remainder, in this case he is holden to performe all the conditions comprised within the Indenture, as the tenant for terme of life ought to doe in his life, and yet hee in the remainder never sealed any part of the Indenture: But the cause is, that inasmuch that hee entreth and agreeth to haue the Land by force of the Indenture, he is holden to perform the condition within the Indenture, if he will haue the Land, &c.

Also if a Feoffement be made by deed Poll vpon condition &c. And for this that the condition is not performed, the Feoffor entreth and happeth the possession of the deed Poll, if the Feffee bring an actiõ of that entry against the Feoffor, it hath bin a question, if the Feffor may pleade the Condition, &c. by the Deede Poll against the Feoffee: And some haue said nay, inasmuch that it seemeth vnto them, that a deed Poll, and the propertie of the same deed appertaineth to him to whom the deede is made, and not to him that made the deede. and inasmuch that such a deed appertaineth not to the Feoffor, it seemeth to them that hee may not plead this deed, &c. And other haue sayd the contrarie, and haue shewed diuers causes. One is, if the case bee such, that in the action be-

betweene them the feffée plead the ſame deed, & ſhew this to the court: In this caſe inſomuch that the deed is in the Court, the Feoffor may ſhew in the Court, how in the deed be diuers conditions to bee performed of the part of the feoffée, and for this that they be not performed, he entred &c and thereto he ſhalbe receiued: by the ſame reaſon when the feoffor hath the deed in hand, & ſheweth it to the court, he ſhalbe wel receiued to plead of this &c. and namely when the Feoffor is priuy to the deed, for he ought to be priuy to the deed when he made the deed.

Alſo if two men make or do a treſpas to an other, the which releaſeth to one of them by his deed all actions perſonals, and notwithſtanding he ſueth an action of treſpas againſt the other, the defendant may wel ſhew that the Treſpas was done by him and an other his fellow, and that the plaintife by the deed that he ſhewed forth releaſeth to his fellow all actions perſonals, and yet ſuch deed appertaineth to his fellow, and not vnto him, but for this that he may haue aduantage by the deed, if he will ſhew the deed to the Court, hee may well plead, &c. Therfore by the ſame reaſon in the other caſe, when the Feoffor ought to haue aduauntage by the condition compriſed within the deed Poll.

Alſo, if the feoffée gaue or graunted the deed Poll to the Feoffor, ſuch graunt ſhall be good, and then the deed, and the property of the deed appertaineth to the Feoffour. And when the

Feoffor hath the deed in hand, and pleadeth it to the Court, it ſhall be rather vnderſtood that he came to the deed by a lawful meane then by a forcious meane. And ſo it ſeemeth that hee may wel plead ſuch a deed poll, that cõprehendeth condition &c. if hee haue the deed in hand, &c. Ideo ſemper quære de dubijs, quia per rationes peruenitur ad legiſ rationem.

Eſtates that men haue vpon Condition in the law, bee ſuch eſtates that haue Condition in the Law annexed to them, though it be not ſpecified in writing, ſo as a man grant by his deed to another the office of a Parkerſhip of a Parke, to haue and to occupie the ſame office for terme of his life, the eſtate that hee hath in the office, is vpon condition in the Law, that is to ſay, that the Parker wel and truely ſhall keepe the parke, and doe that that to the office appertaineth to doe: or otherwiſe that it ſhall be lawfull to the graunter and to his heires to put him out, and to graunt that to an other if he will &c. And ſuch condition as is vnderſtood by the law to bee annexed to ſome thing, is as ſtrong as if the Condition were ſet or put in writing. In the ſame maner it is of graunts of offices of Stewards, Conſtables, Bedels, Bailifes, and other officers. But if ſuch office be graunted to a man to haue and to occupy by him or by his deputy, then if the office be occupied by him or by his deputy, as it ought by the Law to bee occupied, this ſufficeth for him, or elſe the grantor or his heires may put him out

as

es is aforeſaid.

Plow. 6. 9

Alſo, eſtates of lands or tenements may be vpon condition in the law, though that vpon the eſtate made, there was no rehearſall made of the condition: As put the caſe that a leaſe be made to the husband and his wife, to haue and to hold to them during the couerture betweẽ them, in this caſe they haue eſtate for terme of their two liues vpon conditiõ in the law, that is to ſay, if one of thẽ die, or if diuorce be made betweẽ them, that then it ſhalbe lawful to the leſſor, & his heires to enter &c. & that they haue eſtate for terme of their two liues, it is proued thus: Euery man that hath eſtate of frankte-nement in any lands or tenements, either hee hath eſtate in fee, or in fee tayle, or for terme of life, or for terme of anothers life, & yet by ſuch leaſe they haue Frankteenement, but they haue not by the grant, fee, nor taile, nor for terme of anothers life, Ergo they haue eſtate for terme of their two liues, but this is vpon condition in the law in forme aforeſaid. And in this caſe if they make waſt, the leſſor ſhall haue againſt them a writ of waſt, ſuppoſing by his writ Quod tenent ad terminum vitæ, &c. but in his plee he ſhall declare how & in what maner the leaſe was made. In the ſame maner it is, if an abbot make a leaſe to a man, to haue & to hold during the time ẏ the leſſor is Abbot: In this caſe the leſſee hath eſtate for terme of his owne life, but this is vpon condition in law, that is to ſay, ẏ if the abbot die, or reſign, or be depoſed

it shalbe lawfull to his successors to enter &c.

Also, a man may see in the Booke of Assises, Añ 38.E.3. a plee of assise in this forme that insueth. Assise of Nouel disseisin was sometime brought against one B. that pleadeth to the assise, & was found by verdict that the auncestor of the plaintif deuised the tenemẽts to be sold by the defendant ꝑ was his executor to make distribution of the money for his soule. And it was found, that a man after the death of the testator tendred him a certain summe of mony for the tenements, but not to the value, & that the executor after held the Tenements in his owne hand by two yeres, to the intent to haue sold the tenements more dearer to some other: And it was found that hee had all the while after taken the profits of the tenements to his owne vse, without any thing doing for ꝑ soule of the dead. ¶ Mombary, the executor in such case is holden by the law to make such sale as soone as he may after the death of the testator, & it is found that he refused to make the sale, & so the default was in him: And also by force of the deuise he was holden to haue put all the profits of the said tenements to the vse of the dead, and it is found that he hath taken them to his owne vse, and so another default is in him, wherfore it was adiudged that the plaintife should recouer &c. And so it appeareth in the said iudgemẽt, that by force of ꝑ said deuise the executor had none estate or power in the tenements, but vpon condition in the law &c.

And

And in such cases it needeth not to have shewed any deed, rehearsing the condition &c. Ex paucis dictis intendere plurima possis. More shalbe said of conditions in the chapter of descents that take away entrie, & in ꝑ chapter of Releases, & in the chapter of Discontinuance.

Descents.

DEscents that take away entries be in 2. maners, that is to say, where the descent is in Fee, or in Fee taple. Descent in fee that taketh away entrie is, if a man seised of certaine lands or tenements, is disseised, and the disseisor hath issue and dyeth of such estate seised: Now the tenements descend to to the issue of the disseisor by course of the law, as heire vnto him. And for this that the Law putteth the lands or tenements vpon the issue, & the issue commeth to the tenements by course of ꝑ law, and not of his owne deed, the entrie of the disseisee is taken away, & he is thereof put to his writ of Entre vpon disseisin against the heire of the disseisor to recouer the land.

Descent in the taple that taketh away entrie is, if a man be disseised, and the disseisor giueth the same Land to another in the taile, and the tenant in the taile hath issue and dyeth seised of such estate, and the issue entreth, in this case the entrie of the disseisee is taken away, and he is put to sue against the issue of the tenant in the taple, a writ of Entrie vpon

disseisin &c.

And note well, that in such descents that take away entries, it behoueth that a man die seised in his demesne as of fee, or of fee taile, for dying seised for terme of life, or for term of anothers life, shal neuer take away the entry &c.

Also, a descent of reuersion, or of remainder, shall neuer take away entrie &c. so that in such cases that take away entries by force of descents, it behoueth that he that died seised haue fee & franktenement at the time of his dying, or els such descent taketh not away entrie.

Also as it is said of descents that descēd to ꝑ issue of him that dieth seised &c. the same law is where they haue no issue, but the tenemēts descēd to ꝑ brother, or to the sister, or to the vncle, or to some other cosin of him, ꝑ dieth seised &c.

Also, if there be Lord and Tenant, and the Tenant be disseised, and the disseisor alieneth to another in Fee, & the alienee dyeth without heire, and the Lord entreth as in his escheat: In this case the disseisee may enter vpon the Lord, for this, that the Lord commeth not to the Land by descent, but by escheat.

Also, if a man seised of certain land in fee, or in Fee taile vpon conditiō to yeild certain rēt, or vpon other condition, though that such tenant seised in fee, or in fee tayle, die seised, yet if the conditiō be broke in their life, or after their decease &c. this taketh not away the entrie of the feffor, nor of the donor, or of their heirs, for this that the tenancy is charged with the condition,

dition, and the estate of the tenancy is conditionall in whose hands soeuer the tenancy shall come &c.

Also, if such a tenant vpon condition be disseised, & the disseisor die therof seised, & the land descēdeth to ꝑ heire of ꝑ disseisor, now ꝑ entrie of the tenant vpon conditiō that was diseised is taken away, but if the condition be broken &c. thē may the feoffor or the donor ꝑ made the estate or their heires enter &c. Causa qua supra

Also, if a disseisor dye seised, & his heire enter &c. the which endoweth the wife of the disseisor of the third part: of the tenemēts, in this case, as to ꝑ third that is assigned to the wife in dower, incontinent anon after that the wife entreth and hath possession of the same third part, the disseisee may lawfully enter vpon the possession of the wife in the same third part. And the cause is for this that when the wyfe hath her dower she shall be aiudged in, rather immediatly by her husband then by the heire, & so as to the frankstenement of the same third part, the descent is defeited. And so yee may see how before the dowment the disseisee might not enter into any part &c. and after the dowment hee may enter vpon the wife, and yet hee may not enter vpon the other two parts that the heire of the disseisor hath by descent &c.

Also, if a woman be seised of Land, in fee, whereof I haue right and title to enter, if the woman take an husband and haue issue betwéene them, and after the wife dyeth seised,

and after that the husband dyeth, and the issue entreth &c. in this case I may enter vpon the possession of the issue, for this that the issue commeth not to the tenements immediatly by deſcēt after the death of his mother. Añ 9. H 7. fo. 24. it is holden contrarie.

Also, if a diſſeiſor infeoffe his father, & the father entreth & dyeth of such estate seised, by which the tenements deſcend to the diſſeiſor, as to the sonne and heire &c. In this case the diſſeiſée may well enter vpon the diſſeiſor, notwithstanding the deſcent, for this, that as to the diſſeiſin, the diſſeiſor shalbe adiudged in lur as the diſſeiſor, notwithstanding the deſcent.

Also, if a man seised of certaine Land in his demeane as of fée, hath issue two sonnes & dyeth, & the younger sonne entreth by abatement in the Land, the which hath issue, and of this dyeth seised, and the tenements deſcend to the issue, and the issue entreth into the Land: In this case the elder sonne or his heires may enter by the Lawe vpon the issue of the younger sonne, notwithstanding the deſcent, for this, that when the yonger sonne abated in the lād after the death of his father, before any entrie of the elder, the law entendeth that he entreth in clayming as heire vnto his Father, and for this that the elder brother clayme th by the same title, that is to say, as heire vnto his father, he & his heires may enter vpon the issue of the younger brother, notwithstanding the deſcent &c. for this, that they clayme by one self

title,

title. And in the same maner it shall be if there be many descents from one issue to another issue of the younger sonne &c. But in such case if the father were seised of certain land in Fee, and hath issue two sonnes and dyeth, and the elder sonne entreth and is seised &c. And after the younger sonne disseiseth him, by which disseisin he is seised of Fee, and hath issue, and of such estate dyeth seised, then the elder brother may not enter, but is put to his writ of Entre vpon disseisin for to recouer the land. And the cause is for this that the yonger brother commeth to the tenements by a wrong disseisin made vnto his elder brother, & for that wrong the Law may not intend that he claimeth as heire to his father, no more than if a straunge person had disseised the elder brother that neuer had any title &c. And so may yee see the diuersitie, where the yonger brother entreth after the death of his father, before any entrie made by the elder brother in such case &c. And where ỹ elder brother entreth after the death of his father, & is disseised by the yonger brother &c. In the same manner if a man seised of certaine land in Fee, hath issue 2. daughters, & dyeth, & the elder daughter entreth in the land, claiming all the Land to her, and thereof only taketh the profits, and hath issue & dyeth seised by which her issue entreth, which issue hath issue and dyeth seised, and the second issue entreth &c. & sic vltra, yet the younger daughter and her issue, as to the halfe may enter vpon

euery

entrie issue of the elder daughter, notwithstanding such descent, for this that they claime by one seike title &c. But in such case if both two sisters come into the Land to enter after the death of their father, & therof were seised, and after the elder sister therof disseised the ponger sister of that that to her belongeth, & therof is seised in fee, & hath issue, & of such estate dyeth seised, by which the tenements descend to the issue of the elder sister, then the younger sister or her heirs may not enter &c. Causa qua supra

Also, if a man seised of certaine Land hath issue two sonnes, and the elder brother is bastard, and the ponger brother Mulier, and the father dyeth, and the bastard entreth and claimeth as heire vnto his father, and occupieth the Land all his life without any entrie made vpon him by the Mulier, and the bastard hath issue and dyeth of such estate seised in Fee, and the Land descendeth to his issue, and his issue entreth &c. in this case the Mulier is without remedy, for he may not enter, nor he shall haue no action for to recouer the land, for this that it is an auncient law in such case vsed. But it hath beene an opinion of some men, that that shall bee vnderstood where the Father hath a sonne a bastard by a woman, & after he weddeth the same woman, and after the espousels he hath issue by the same woman a sonne or a daughter Mulier, & the father dyeth &c. if such a Bastard enter &c. and hath issue, and dyeth seised &c. Then shall the issue of such a bastard

haue

haue the land clérely to him, as it is aforesaid, &c. and not any other Bastard borne of the mother that was not espoused to his Father, and this is a good and reasonable opinion: For such a bastard borne before the espousels solempnized betwéene his father and his mother, by the Law of holy Church is Mulier, though that by the Lawe of the Land he is a Bastard borne, and so he hath colour of entrie as heire to his Father, for this that hee is by one law Mulier, that is to say, by the Law of holy Church. But otherwise it is of a bastard that hath no manner of colour to enter as heire, insomuch that he may not in no Law be sayd Mulier &c. For such a Bastard is said Quasi nullius filius. But in such case aforesaid, where the bastard entreth after the death of his Father, and the Mulier putteth him out, and after the Bastard disseiseth the Mulier, and hath issue, and dyeth seised, and the issue entreth, then the Mulier may haue a Writ of Entre vpon disseisin against the issue of the bastard, and recouer the land &c. And so may yée sée the diuersitie where such a Bastard continueth his possession all his life without any interruption, and where the mulier entreth and interrupted the possession of such a bastard.

Also, if a child within age haue title & cause to enter into any Lands or tenements vpon another that is seised in Fée, or in Fée taple of the same lands or tenements, if such a man

that

that is ſo ſeiſed dye of ſuch eſtate ſo ſeiſed, and the tenements deſcend to his iſſue, during the time that the childe is within age, ſuch deſcent ſhall not tolle the entrie of the childe, but hee may enter vpon the iſſue that is in by deſcent &c. for this that no laches ſhalbe adiudged in a child within age in ſuch caſe &c.

Alſo, if the husband and his wife, as in right of the wife haue title and right to enter in the tenements that another hath in Fee, or in Fee taple, and ſuch a tenãt dieth ſeiſed &c. In ſuch caſe the entrie of the Husband is taken away vpõ the heire that is in by deſcẽt. But if ꝑ husband dy, then ꝑ wife may wel enter vpõ ꝑ iſſue which is in by deſcent, for this ꝑ the laches of the husband ſhal not turne to the wife & to her heirs in prꝛiudice nor in damage in ſuch caſe, but that the wife & her heires may well enter where ſuch deſcẽt is during the couerture &c.

Alſo, if a man that is not of whole minde, that is to ſay in Latin, Qui non eſt compos mentis, hath cauſe to enter in any ſuch Tenements, if ſuch deſcẽt vt ſupra be had in his life during the time that he was out of his mind, and after dye, his heires may well enter vpon him that is in by deſcent. And in this may ſee a caſe that the heire may enter, & yet his anceſtor that had the ſame title may not enter, for he that was out of his mind at the time of ſuch deſcent, if he wil enter after ſuch a deſcẽt, if an action vpon this bee ſued againſt him, he hath nothing for him to plead, or to help him, but to

ſay

ſay that he was out of mind at the time of ſuch deſcent &c. And he ſhall not be receiued to ſay this, for this that no man of full age ſhal be receiued in any plee by ꝯ law to diſable his owne perſon. But the heire may wel diſable the perſon of his auncеſtor for aduantage of the heire in ſuch caſe, for this, that no laches may be adiudged by the law in him ꝙ hath no diſcretion in ſuch caſe. And if ſuch a man out of his mind make a feoffemēt, &c. he may not enter, ne haue a writ called Dum non fuit cōpos mentis, &c. Cauſa qua ſupra. But after his death his heire may wel enter, or haue the ſame writ Dum non fuit compos mentis at his election, &c.

Alſo, if I be diſſeiſed by a child within age that alieneth to another in fee, and the alienee dieth ſeiſed, and the tenements deſcend to his heire, the childe being within age, mine entrie is taken away. But if the childe within age enter vpon the heir that is in by deſcent, as he wel may, for this that the deſcent was during his nonage, then I may well enter vpon the Diſſeiſor, for this, that by his entry he hath defeated and adnulled the diſcent.

And in the ſame manner it is, where I am diſſeiſed, & the diſſeiſor maketh a feoffement in fée vpon condition &c. & the feoffée dieth of ſuch eſtate ſeiſed &c. I may not enter vpon the heire of the feffée: But if the condition be broken, ſo that by ſuch cauſe the feoffor entreth vpon the heire, now may I wel enter, for this that ſohē the feoffor or his heires enter for the condion

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broken, the descent is vtterly defeated.

Also, if I be disseised, and the disseisor hath issue and entreth into Religion, by force of which the landes descend to his issue, in this case I may well enter vpon the issue, and yet there was a descent: But for this that such descent commeth to the issue by the Fathers deed, that is to say, for that he entred into religion, &c. and his descent commeth not to him by the deed of God, that is to say, by death, &c. mine entry is congeable and lawfull, for if I arraign an Assise of Nouel disseisin against my disseisor, though he after enter into religion this shall not abate my writ: but my writ this notwithstanding shall abide in his force and strength, and my recouery against him shall be good. By the same reason the descent that came to his issue by his owne deed may not put me from mine entrie, &c.

Also, if I let to a man certaine Landes for terme of xx yeares, and an other disseiseth me, and putteth out the termor, and dyeth seised, and the Tenements descend vpon his heire, I may not enter, and yet the Lesse for terme of yeares may well enter, for this that by his entrie hee putteth not out the heire that is in by descent from the Franktenement that vnto him descended, but onely claimeth to haue the tenements for terme of yeres, the which is no expulling of the franktenement of the heire that is in by descent. But otherwise it is where my tenant for terme of life is disseised,

&c.

ꝛc. Cauſa qua ſupra.

Alſo, it is ſaid that if a man be ſeiſed of tenemẽts in Fee by occupation in time of warre, and dieth therof ſeiſed in time of warre, & the tenemẽts deſcend to his heire, ſuch deſcent putteth out no mã of his entry And of this a man may ſee a plee in a writ of Ayel, An 7. E. 2.

Alſo that no dying ſeiſed (where all the tenements come to another by ſucceſſion) ſhall take away the entry of any perſon, ꝛc. For of Prelates, Abbots, Priors, Deanes, or Perſons of Churches, ꝛc. though that there were 20. ſucceſſors, this putteth no man from his entry, ꝛc. More ſhalbe ſaid of diſcents in the chapter of Continual claim ꝛc. See the ſtatute 32. H. 8. cap. 33.

Continuall claime.

COntinuall claime is, where a man hath right & title to enter in any lands or tenemẽts wherof an other is ſeiſed in Fee, or in fee taple, if he that hath title to enter make continuall claime to the lands & tenements, before the dying ſeiſed of him that holdeth the tenements: Then though ſuch a tenant die therof ſeiſed, and the lands and tenements deſcend to his heire, yet may hee that hath made ſuch claime, or his heires, enter into the lands and tenements deſcended, becauſe of the continual claime made, notwithſtanding ſuch deſcent. As in caſe a man be diſſeiſed, and the diſſeiſee

maketh continuall claime to the tenements in the life of the disseisor, though the disseisor dye seised in fee, and the land discendeth vnto his heires, yet may the disseisée enter vpon the possession of the heire, notwithstanding such discent.

In the same maner it is, if tenant for terme of life alien in fee, hee in the reuersion, or hee in the remainder may enter vpō the alienée. And if such alienee die seised of such estate without continuall claime made to the tenements before the dying seised of the alienee, & the tenements because of the dying seised of the alienée discend vnto the heire of the alienée, then may not he in the reuersion, nor he in the remainder enter. But if he in the reuersion, or hee in the remainder that hath cause to enter vpon the alienée, made continuall claim to the tenements before the dying seised of the alienée, then such a man may enter after the death of the alienée, as well as he might in his life, &c.

Also, if Lands be let vnto a man for terme of his life, the remainder vnto an other for terme of life, the remainder vnto the third in Fee, if the tenant for terme of life alien to an other in fee, and he in the remainder for terme of life maketh continuall claime vnto the land before the dying seised of the alienée, & after the alienee dieth, &c. and after he in the remainder for terme of life dieth before any entrie made by him: In this case he in the remainder in Fee, may enter vpon the heire of the alienee, because

because of continuall claime made by him that had ꝯ remainder for terme of life, for this that such right that hee hath to enter, shall goe and remaine to him in the remainder after him, insomuch that he in the remainder in fee may not enter vpon the alienee in fee during the life of him in the remainder for terme of life, and because he might not make continual claime, for none may make continual claime but when he hath title to enter. But it is to be shewed to thee my child how & in what maner continuall claime shalbe made, & to learne this, 3. things there be to be vnderstood. The first thing is, if a man haue cause to haue any landes or tenements in diuers townes within one Shire, if he enter in any parcell of the lands or tenements that be in one towne, in the name of all the lands or tenements to which he hath right to enter within all ꝯ townes in the same shire, by such entry he hath as good possessiō & seisin of such lands & tenements wherof he hath title to enter, as if he had entred into euery parcell, and this seemeth great reason, for if a man will infeoffe another without deed, of certaine lands or tenements ꝯ he hath in many townes within one shire, & he will deliuer seisin to the Feoffee of parcel of the tenements within one towne in the name of all the lands & tenemēts that he hath in the same towne, & in all ꝯ other townes &c. all the said tenements &c. shall passe by force of the said Liuerie of seisin to him to whom such feoffement in such maner is made:

And yet he to whō such liuery of seisin is made hath no right to all the lands & tenemēts in all the townes, but by reason of the liuery of seisin made of parcell of the lāds or tenemēts in one towne, a multo fortiori it semeth good reason, that when a man hath title to enter into lands or tenemēts in diuers townes within one shire before any entry by him made, by the entrie of him made in parcel of the tenements in one town, in the name of al the lands & tenements to the which hee hath title to enter within the same shire, this is a seisin of all in him, and by such entry he hath possession and seisin in deed, as if he had entred into euery parcell, &c.

The second is to vnderstand, that if a man hath title to enter into any lands or tenemēts, if hee dare not enter into the same lands or tenements, nor in any parcel therof for doubt of beating, or for doubt of maiming, or for doubt of both, if he go & approach as nigh ye tenemēts as he dare for such doubt, and claim by words the Tenements to be his, incontinent by such claime he hath a possession & seisin in the tenements, aswel as if he had entred indeed though he had neuer possessiō or seisin of ye same lands or tenements before the said claime. And that the law is such, it is wel proued by a plee of an assise in the booke of Assises, Ann. 38. E. 3. P. 23. the tenor of which ensueth in this forme.

In the county of Dorset before the Iustices it was found by verdict of Assise, that the plaintife which had right by descent of heritage,

tage, to haue the tenements put in plaint at the time of the death of his auncester, which was dwelling in the towne where the tenements were, & by word clameth the tenemēts among his neighbors, but for doubt of death he dare not approch vnto the tenements, bringeth an assise, & vpon the matter found, it was awarded that he should recouer.

The third thing is, to vnderstand within what time, and by what time the claim that is said cōtinual claime shal serue & help him that made the claime & his heire. And as to this it is to wit, that he that hath title to enter, when he wil make his claime, if he dare approch vnto the land, then it behoueth him to goe vnto the land, or to parcell of it, & make his claime: And if he dare not approch vnto the land for dread of beating, maiming, or death, then it behoueth him to go, & to approch as nigh as he dare toward the land, or parcell therof, & make his claim. And if his aduersary that occupieth the land die seised in fee, or in fee taile, within a yere & a day after such claime made, by which the tenements descend vnto his sonne, as heire vnto him, yet may he that made the claime, enter vpon the possessiō of the heire. But in this case after the yeare and the day þ such claime was made, if none other claime be made, if the father the die seised the morrow after the yere & the day, or at an other day after &c. then may not he þ made the claim enter. And therefore if he þ made the claim wil be sure alway that his

entry shall not be taken away by such descent, it behoueth him within the peare and the day after the first claime, to make another claime, in the forme aforesaid: And within the pere and the day after the second claime, to make the 3. claime in the same maner: & within the pere & the day after the third claime to make another claime &c. that is to say, to make another claim within euery pere & day next after euery claim made during the life of his aduersary, & then at what time that his aduersary die, his entry shall not be taken away by descent. And such claime made in such maner, is most commonly taken and called Continuall claim of him that made the Claime. But yet in case aforesayd, where his aduersary dieth within the pere and the day next after the first claime, this is in the law a continuall claime, insomuch that his aduersary died within the pere & the day after ꝑ same claim, for it is no need for him that made the claim to make any other claim, but at what time he will within the same pere and the day, &c. Also if his aduersary bee disseised within the vere & day after the claim, and the disseisor dieth therof seised within the pere and the day &c. This dying seised shall not hurt him that made the claime, but that he may enter &c. For whosoeuer he be that died seised within ꝑ pere & the day after such claime, that shall not hurt him that made the claime, but that he may enter though there were many dyings seised, and many descents within the pere and the day, &c.

Also

Also, if a man be disseised, and the disseisor dy seised within the yeare and the day next after the disseisin done, whereby the tenements descend to his heire, in this case the entrie of the disseisée is taken away, for the yeare & the day that should helpe the Disseisee in such case &c. shall not be taken from the time of the title of entrie grown vnto him, but only frō the time of the claim by him made in maner aforesaid: & for that cause it shalbe good for such a disseisee for to make his claime &c. in as short time as he may after the disseisin &c.

Also, if such a disseisor occupy the lād by xl. yeres without any claim made by the disseisee &c. & the disseisée by little space before the death of the disseisor make claime in the form aforesaid, if so it fortune that within a yere & a day after such claime the disseisor die seised &c. the entrie of the disseisée is congeable, & for this it shalbe good for such a man that made no claime that hath titl to enter &c. when he heareth that his aduersary lieth sick to make his claime &c.

Also, as it is sayd in the cases put before, where a man hath title to enter because of a disseisin &c. The same Law is where a man hath right to ēter because of any other title &c.

Also in the said Presidents may yée know my childe two things. One is, where a man hath title to enter vpon any tenaunt in taple, if he make any such claime vnto the land &c then is the state of the taile defeated, for that claime is as an entre made by him, and is of the same

effect in the Law, as if he were vpon the same Tenements, and had entred in the same tenements, as is aforesaid. And then when the tenant in taile immediatly after such claim continueth his occupation in the tenements, this is a disseisin made of the same tenements vnto him that made the claime, Et sic per consequens, the tenant then hath fee simple.

The second thing is, that as oft as he that hath right to enter maketh such claime, & this notwithstanding his aduersary cõtinueth his occupation &c. so oft the aduersary doth wrong and disseisin to him that made the claime. And for this cause so oft may he that made the same claime for euery such wrong & disseisin made vnto him, haue a writ of trespas, Quare clausum suũ fregit &c. to recouer his damages &c. or he may haue a writ vpon the statute of R. Rich the 2. made the 5. yere of his reigne, supposing by his writ that his aduersary hath entred into the lands or tenemẽts of him that made the claime, where his entry was not giuen by the law &c. & by such action he shall recouer his damages &c. And if the case be such, that the aduersary occupy the tenemẽts with force & armes, or with a multitude of people at the time of such claime &c. Then may he that made ꝑ claime, for euery such time haue a writ of forcible entry & recouer his trebie damages.

Also here it is to see, if the seruant of a man that hath title of entrie, may by the commandement of his master make continuall claime for

for his Master in his name, & it seemeth that in some cases he might do this, for if he by his commandment come to any parcel of the land, and there maketh claim &c. in the name of his Master, this claime is good for his Master, for this that he hath done all that it behoueth his Master to do in such case &c.

Also if a Master say vnto his seruant that he dare not go into the lād, nor into any parcel of the land for to make any claim &c. and dare not approch more nigh vnto þ same land, saue to such a place called Dale, & commandeth his seruāt to go to the same place of Dale, & there to make a claime for him &c. if the seruant doe &c. this seemeth as good claime for his master, as if he had bēn there in his owne person, for that the seruant did all that his Master durst do, and ought to do by the law in such case.

Also, if a man be so sicke, or so lame that hee may not in any maner come to the land, nor to any parcell of the same, or if there be a reclaie that may not because of his order goe out of his house &c. if such a manner of person commaund his seruant to go and make claime for him &c. and the seruāt dare not go to the land, nor to any parcel thereof for doubt of beating, mayme, or death, and for that cause such seruant commeth as nigh to the land as hee dare for such dread, and maketh his claime &c. for his Master, it seemeth that such claim for his Master, is good and strong in law, for els his Master should bee in too great mischiefe, for

it may well be that such a person that is sicke, or lame, or reclusé, cãnot find any seruant that dare goe vnto the land, nor to any parcell of it to make the claime for him &c. But if the Master of such seruãt bee in good health and may dare well to goe to the tenements, or to parcell of it to make his claim for him &c. if such a Master command his seruant to goe to some parcell of the land and make claim for him &c. And when the seruãt is going to doe the commandement of his Master, he heareth by the way such things that he dare not goe to any parcell of the land for to make any claime for his Master, & for that cause he goeth as nigh vnto the Land as he dare for doubt of death, and there he maketh claime for his master in the name of his master &c. It seemeth that the doubt in the law in such case shalbe if such claime auaile his master or not, for this that the seruant did not all that his master at the time of commandment durst to haue done.

Also some haue said, that where a man is in prison and is disseised, and the disseisor dieth seised, during the time that the disseisee is in prison, by which the tenements descended to ỹ heire of the disseisor, they haue said that this shall not hurt the disseisee that is in prison, but that he may well enter notwithstanding such descent, for this ỹ he may not make continuall claime whẽ he was in prison And also if such a one that is in prison be outlawed in an actiõ of det or trespasse, or in appeale of robery &c.

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he shall reuerse such outlawry by writ of Error &c. because he was in prison at the time of the outlawrie against him pronounced.

Also if a recouerie be had by default against such a one that is in prison, he shall auoide the iudgement by a writ of Error for this that he was in prison at the time of such default made &c. and because that such matters of Record shal not hurt them that be in prison, but that it shalbe reuersed &c. a multo fortiori, It seemeth that a matter in deed, that is to say, such descēt had when he was in prison shall not hart him &c. specially for this, that he may not go out of prison to make continuall claime &c.

And in the same manner it seemeth to them where a man is out of the realm in the kings seruice for businesse of the realm, if such a man be disseised when he is in the seruice of the K. that such descent shall not hurt the disseisor, but for this that hee might not make continuall claime &c. it seemeth vnto them that when he commeth againe into England, hee may enter againe vpon the heire of the disseisor &c. For such a man shall reuerse an outlawry that is pronounced against him during the time that he is in seruice &c. Ergo a multo fortiori he shal haue aid by the law in the other case &c.

Also others haue said, that if a man bee out of the Realme, though he be not in the Kings seruice, if such a man being out of the Realme be disseised of lands or tenements within the Realme and the disseisor dye seised &c. the disseisee

ſeiſée being out of the Realme, it ſéemeth vnto them, that when the diſſeiſée commeth into the realme, that he may well enter vpon the heire of the diſſeiſor &c. and this ſéemeth vnto them for two cauſes: One is, that he that is out of the realm, may not haue knowledge of the diſſeiſin made vnto him by vnderſtanding of the law, no more than that a thing done out of the Realme may be tried within this Realme by the oath of xij men, and to compell ſuch a man to make continuall claim, which by the vnderſtanding of the Law can haue no knowledge or Conſeance of ſuch Diſſeiſin made or done, this ſhalbe inconuenient, namely when ſuch a diſſeiſin is done vnto him, when he was out of the Realme, and the dying ſeiſed was done when he was out of the realm, for in ſuch caſe hee may not by poſſibilitie after the common preſumption make no continuall claim: But otherwiſe it ſhall be if the diſſeiſée were within the realme at the time of the diſſeiſin, or at the time of the dying ſeiſed of the diſſeiſor &c. An other matter they alledge for a proofe, that before the ſtat. of K. E. the 3. made the 34. yeare of his raigne, by which ſtatute Nonclaime is out &c. the law was ſuch, that if a fine were leuied of certain lands or tenements, if any that was a ſtranger to the fine had right to haue & to recouer the ſame lands or tenements, if hee came not and made his claim thereof within a yeare & a day next after the fine leuied, he ſhall be barred for euer, Quia dicebatur quod finis

finem

sine litibus imponebat. And that the law was such, it is proued by the stat. of Westm. the 2. De donis conditionalibus, where it speaketh if the fine be leuied of Tenements giuen in the tayle &c. Quod finis ipso iure sit nullus, nec habeant hæredes, aut illi ad quos spectat reuersio (licet plenæ ætatis fuerint, in Anglia, & extra prisonam) necesse apponere clameū suum. So it is proued, that if a stranger that hath right vnto the tenements, if he were out of the realm at the time of the fine leuyed &c. shall haue no damage, though that such fine was matter of record: by greater reason it serueth vnto them that a disseisin & discent that is matter in deed shal not so greeue him that was disseised when he was out of the Realme at the time of that disseisin, & also at the time that the Disseisor dyed seised &c. but that he may well enter notwithstanding such descent. Also inquire if a man be disseised, & he arraign an assise against the disseisor, and the recognitors of the assise chante for the plaintife, and the Iust. of assise will be aduised of their iudgements vntill the next assise &c. & in the mean season the disseisor dieth seised &c. yet the said suit of the assise shall be taken in Law for the disseisee a continuall claim, insomuch y^t no default was in him &c.

Also inquire if an Abbot of a monastery dy, & during the time of vacation, a man wrongfully entreth in certaine parcels of land of the monastery, claiming the Land vnto him and his heires, and of that estate dyeth seised, and

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the land deſcendeth vnto his heires, and after that an Abbot is choſen, & made Abbot of the Monaſtery, a queſtiõ is, if the Abbot may enter vpon ꝑ heire or not. And it ſeemeth to ſome that the Abbot may well enter in this caſe, for this that the Conuent in time of vacation was no perſon able to make continuall claim, for no more than be they perſonable to ſue an action, no more be they perſonable to make continuall claime, for the conuent is but a dead body without head, for in time of vacation a grant made vnto them is void, & in this caſe an abbot may not haue a writ of Entre vpon diſſeiſin againſt the heire, for this that he was neuer diſſeiſed. And if ꝑ Abbot may not enter in this caſe, thẽ he ſhalbe put vnto his writ of Right, ꝑ which ſhall bee hard for the houſe. By which it ſeemeth to thẽ that the abbot may wel enter &c.

Quæras de dubijs, Legem bene dicere ſi vis,
Quęrere dat ſapere quę ſunt legitima vere.

Releaſes.

RElеaſes be in diuers maners, that is to ſay: Releaſe of right that a man hath in lands or tenements: & releaſe of actiõs reals & perſonals, & of other things. Releaſe of all the right that a man hath in lands or tenements &c. is commonly made in ſuch forme, or to ſuch effect. Nouerint vniuerſi per pręſentes me, A.B. remiſiſſe, relaxaſſe, & omnino de me & hæredibus meis quietũ clamaſſe E. de D. totum ius, titulum, & clameũ meũ quæ habui, habeo, vel quouiſmodo in futuꝝ habere potero, de,

de,& in vno meſſuag' cum ptiñ in P. And it is to be vnderſtood, that theſe wordes (Remiſiſſe & quiet clamaſſe) be of ſuch effect as theſe wordes (Relaxaſſe &c) And alſo theſe wordes which be cõmonly put in ſuch deedes of releaſes, &c. that is to be vnderſtood, Quæ quouiſmodo in futurũ habere potero, be as wordes void in the law, for no right paſſeth by a Releaſe, but the right that the releſſor hath at the time of his releaſe made: For if it be father & ſonne, & the father be diſſeiſed, & the ſon liuing his father releaſeth by his deed to the diſſeiſor all the right that he hath, or may haue in the ſame tenemẽts, without clauſe of warrantize &c. and after the Father dyeth, the ſonne may lawfully enter vpon the poſſeſſion of the diſſeiſor, for this ỹ hee had no right in the land liuing his father, but the right deſcended vnto him by diſcent after the releaſe made by the death of his father. Alſo in a releaſe of all the right that a man hath in certaine lands, it behoueth vnto him to whom the releaſe is made in ſuch caſe, that he hath a Freehold in the lands in deed, or in the law, at the time of the releaſe made, for in euery caſe where he to whom the releaſe is made hath a Freehold in deede or in law at the time of the releaſe made &c. the releaſe is good. Frãktenement in law is, as if a man haue diſſeiſed another, & therof dieth ſeiſed. by the which ỹ tenements deſcend vnto his ſon, howbeit that his ſonne enter not in the tenements, yet hee hath a frankteneement in the law, which by force of

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the defcent is caſt vpon him, and therefore the releaſe made is good enough And if he take a wife ſo being ſeiſed in the law, howbeit that he neuer enter in deed, & dieth, his wife ſhall haue thereof her dower. And in ſuch caſe of releaſe of all his right, howbeit that hee to whom the releas is made, ne hath any thing in the franktenement, neither in deed nor in law, yet the releaſe is good enough. If the diſſeiſor haue let land that he had by diſſeiſin to an other for terme of his life, ſauing the reuerſion to him, if the diſſeiſee or his heires releaſe vnto the diſſeiſor all the right, &c. that releaſe is good, for that & he to whom the releas is made, had in him a reuerſiõ at the time of the releas made. In the ſame maner if a leas be made to a man for terme of life, the remainder vnto an other for terme of life, the remainder vnto the third in tayle, the remainder vnto the fourth in fee, if a ſtraunger that hath the right vnto the land releas all his right vnto any of them in the remainder, ſuch releas is good, for this & euery of them hath a remainder veſted in himſelfe: yet if the tenant for terme of life be diſſeiſed, & after he that hath right (the poſſeſſion being in the diſſeiſor) releas vnto one of them to whom the remainder was made, all his right, &c. that releas is void, for that that he ne had in him no remainder in deed, but all onely a right of a remainder at the time of the releas made.

And note, & euery releaſe made to him that hath a reuerſiõ or remainder in deed, ſhal ſerue

and

and help them that haue the franktenemẽt, as well as them to whom the releaſe is made, if the tenant haue the releaſe in his hand, &c.

In the ſame maner a releas made to a tenãt for terme of life, or to a tenant in the taile, ſhall enure vnto them in the reuerſion, or to them in the remainder, as well as to the tenant of the franktenement; & they ſhall haue as great aduantage of that, if that they may ſhew it.

And if there be lord & tenant, and the tenant is diſſeiſed, & the lord releaſeth vnto the diſſeiſee all the right that he hath in the ſeignioꝛie, or in the land, that releas is good, & the ſeignioꝛy is extinct. And if the goods of the diſſeiſee be takẽ, and of them the diſſeiſée ſueth a Replegiare againſt the lord, he ſhall compell the lord to auoẅ vpon him, & if he will auoẅ vpon the diſſeiſoꝛ, then vpon the matter ſheẅed, the auoẅry ſhalbe abated, foꝛ the diſſeiſée is tenant to him in right and in laẅ.

Alſo if land bee giuen to a man in the taile, reſeruing vnto the donoꝛ & his heirs a certain rent, if the donée be diſſeiſed, & after the donoꝛ releaſeth to the donée all the right that he hath in the land, and after the donée entreth into the land vpon the diſſeiſoꝛ: in this caſe the rent is gone, foꝛ this that the diſſeiſee at the time of the releas made ẅas tenant in right, & in laẅ vnto the donoꝛ, and the auoẅrie of fine foꝛce ought to be made vpon him by the donoꝛ of the rent behind, &c. But yet nothing of the right of the land, that is to ſay, of the reuerſion ſhall

paſſe

passe by such release for this that the donee to whom the releas was made then had nothing in the land but only a right, & so the right of the land may not passe by such releas to the donee.

In the same manner it is, if a lease bee made to one for terme of life, reserving to the Lessor and to his heires certaine rent, if the Lessee be disseised, & after the lessor releaseth to the lessee and to his heires, and after the lessee entreth, howbeit that in this case the rent is extinct, yet nothing of the right passeth, &c. Causa qua supra. But if it be very Lord, and very tenant, and the tenant maketh a Feoffement in fee, the which feoffee neuer became tenant to the lord, &c. if the lord releas to the feoffor all his right, &c that release is void, for this that the feoffor hath no right in the land, and hee is no tenant in right to the Lord, but only tenant as for the auowry to be made, and he shall neuer compell the Lord to auow vpon him, for the Lord may auow vpon the feoffee if he will. Otherwise it is where the very tenant is disseised, as in case aforesaid, for if the very tenant that is disseised holdeth of the Lord by knights service & dieth, his heire being within age, the lord shall haue and seise the ward of the heire. And so he shall not haue the ward of the feoffor that made the Feoffement in fee, and so it is a great diuersity betweene the two cases.

Also, if a man enfeoffe another in his Land vpon trust, and to the intent that hee shall performe his last will, and the feoffour occupieth the

the same at the will of his Feoffees, and after the feoffees release by their deed vnto ꝑ feoffor all the right, &c. This hath beene in question if such release bee good or not, and some haue said that such release is void, for this that no priuitie was betweene the Feoffees and their Feoffor, insomuch that no Lease was made after such feoffement by the feoffees and their feoffor, to hold at their will, &c. and some haue said the contrary, & that for two causes. One is, that when such feoffements are made vpon confidence, to performe the will of the Feoffor, that it shall bee vnderstood by the law, that the Feoffor by and by ought to occupy the land at the will of his feoffees, and so it is such maner of priuitie betweene them, as if a man make a feoffement to other persons, and they incontinent vpon the feoffement will say & grant that the Feoffor shall occupy the land at their will &c. An other cause they alleadge, that if such land be worth xl. s. by yeare, &c. That such feoffor shalbe sworne in Assises, and in other Inquests, in pleas reals, and also in pleas personals, of what great summes soeuer that the plaintifes will declare &c. And this is by the common Law of the land: Ergo this is for a great cause, and the cause is that the law will that such feoffors and their heirs ought to occupy, &c. And to take thereof the rent & all the profits, and all maner of issues and reuenues &c. as though the tenements were the feoffors without interruptiō of ꝑ feoffees, notwithstā-

ding such Feoffements, Ergo the same law giveth a priuity betwixt such feoffors, and their Feoffees vpon confidence, &c. For which causes they haue said, that the Releas made by such Feoffees vpon cõfidence to the Feoffor, or to his heires &c so occupying the land &c. shall be good enough, &c. And this is the better opinion as it seemeth. Quære since the statute 27. H. 8. cap. 10. Also releases after the matter in deede sometime haue their effect by force to enlarge the estate of them to whom the releas is made: As if I let certaine Land to a man for terme of yeres, by force whereof he is possessed, and I release vnto him all the right that I haue in the land without more words set or put in the deed, and deliuer vnto him the deede: Then hee hath estate but for terme of his life, and the cause is for this, that when the Reuersion or the Remainder is in a man, the which will enlarge by his releas the estate of the tenant &c. he shall haue no greater estate but in the manner and forme as if such a Lessour were seised in Fee, and will by his deed make estate to one in a certaine forme &c. and deliuer vnto him seysin by force of the same deed, if in such deed of Feoffement there be no word of Inheritance &c. Then he hath estate but for terme of life, &c. and so it is in such Releas made by him in the Reuersion, or in the remainder: For if I let land to a man for terme of life, and after I release vnto him all my right without more saying in the re-

lease

leafe, his eſtate is not inlarged. But if I releaſe vnto him & to his heires of his bodie engendred, then he hath fee taile. And if I releas vnto him & to his heires, then hath he fee ſimple. So it behoueth in ſuch caſe to ſpecifie in the deed, what eſtate he to whom the releas is made ſhal haue &c. And ſometime a releas ſhal enure to ſet and put the right of him that maketh the releas to him to whom the releas is made: As a man is diſſeiſed, and he releaſeth vnto the Diſſeiſor all the right that hee hath, In this caſe the diſſeiſor hath his right, ſo that where his eſtate before was wrong, now by the releaſe it is lawful & right. But note well, that when a man is ſeiſed in fee ſimple of any lands or tenements, and another will releaſe vnto him all the right that he hath in the ſame tenemẽts, it needeth not to ſpeak of the heires of him to whom the releaſe is made, for this that he had fee ſimple at the time of the releas made: for if the releas were made to him and to his heyres for one day, or for one houre, this ſhall bee as ſtrong vnto him in the Law, as he had releaſed to him and to his heires, for when his right was gone from him at one time by his releas without any condition, &c. to him that had fee ſimple, it is gone for euer. But where a man hath a reuerſion or a remainder in fee ſimple at the time of the releaſe made, there if he will releaſe to the Tenaunt for terme of yeares, or for terme of life, or in the taile, it behoueth to determine the eſtate

that he to whom the releas is made shall haue by force of the same releas: For this that such releas goeth to inlarge the estate, &c. of him to whom the releas is made: but otherwise it is where a man hath but a right vnto the land, & had nothing in the reuersiō nor in ꝑ remainder in deed: for if such a man releas all his right to one that is tenant of the frankstenement, all his right is gone, though that no mention bee made of the heires of him to whom the releas is made. For if I let land to a man for term of life, if I after releas vnto him for to inlarge his estate, either it behoueth that I releas vnto him & to his heires of his body ingēdred, or to him and to his heires males of his body begotten, or by such semblable estate &c or otherwise he hath no greater estate then he had before. But if my tenant for terme of life let the same land out to an other for terme of the life of his Lessor, the remainder to another in Fē, now if I releas vnto him vnto whom my tenant letted for term of life, I shalbe barred for euer though that no mention bee made of his heires, for this that at the time of the releasle made I had no reuersion, but onely a right to haue the reuersion: For by such a leasle with a remainder ouer that my tenaunt made, in this case my reuersion is discontinued, & such a releasle shall enure vnto him in the remainder to haue aduantage of this, aswel as to the tenant for term of life, for to that intent the tenant for terme of life, & he in the remainder bee as one

tenant

tenãt in the law, & be as if one tenãt were sole seised in his demeine as of fee at ꝑ time of such releas made vnto him. Also if a man be disseised by two, if he releas vnto one of thẽ, he shall hold his fellow out of the lãd, & by such releas shal sole haue possessiõ & estate in the lãd. But if one disseisor inherite two in fee, & the disseisee releasle to one of them, this shall inure to both the said feoffees. And the cause of the diuersity betwen these two causes, is apparãt enough

Also, if I be disseised, & the disseisor is disseised, if I releas to the disseisor of my disseisor, my disseisor shall neuer haue Assise nor enter vpon his disseisor, for this that his disseisor hath my right by my releasle &c. And so it seemeth in this case, that if there were xx. disseisors ech after other, & I releas to the last disseisor, he shall bar all the other of their actions & their title. And the cause is, as it seemeth, for this, ꝑ in many cases whẽ a mã hath a lawful title to enter, though he enter not &c. he shal defeat all mean titles by his releas &c. But this is not in euery case, as shalbe said afterward.

Also, if a man be disseised, the which hath a sonne within age, and dyeth, & bring the sonne within age, the disseisor dyeth seised, & the lãd descendeth to the heire, and a straunger abateth, and after the sonne of the disseisee when he comuneth vnto full age releaseth al his right &c. to the abator: In this case the heire of the disseisor shall haue no Assise of Mordancestor against the abator, but he shalbe barred of the

Assise, for this that the abator hath the right of the son of the disseisee by his releas, and the entry of the son was lawfull &c. for this that he was within age at the time of the descent &c. But if a man be disseised, & the disseisor maketh a feffement upon condition, ꝑ is to say, to pay vnto him certaine rent, and for default of paiment a reentrie &c. if the disseisee releas to the feoffee upon condition, yet this amendeth not the estate of the feoffee upon condition, for notwithstanding such releas, yet his estate is upon condition as it was before. In the same maner it is where a mā is disseised of certain land, & the disseisor grāteth a rent charge out of the same land, though that after the disseisee releaseth vnto the disseisor &c. yet ꝑ rēt charge abideth in his force: And the cause is in these two cases, that a man shall haue none aduantage by such releas that shall bee against his owne proper acceptance, & against his owne grant: & no though that some haue said, that where the entry of a man is congeable by, on a tenāt, if he releas to the same tenant, that this auaileth vpon the tenant, so as hee had entred vpon the tenant & after infeoffed him &c. this is not true in euery case, for in the first case of these two cases, if the disseisee in fee enter upō the feffee upon condition, & after infeoffeth him then the condition is all put a side & void And in the second case if the disseisee enter & infeoffe him that granted the rent charge, then is the rent charge auoyded. But it is not auoyded

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by any such release without entrie made &c.

Also, if a man be disseised by a child within age, ꝯ which alieneth in fee, & the alienee dieth seised, and his heire entreth (being the disseisor within age) Now it is in the election of ꝯ disseisor to haue a writ of Dū fuit infra ætat, or a writ of right against the heire of the alienee, & which writ soeuer he taketh of them, he ought to recouer by the Law. And also he may enter into the land without any recouery, & in this case the entry of the disseisee is taken away: but in this case if the disseisee releas his right to the heire of the alienee, and after the disseisor bringeth a writ of Right against the heire of the alienee, & he ioineth the mise vpō the cleere right &c. the grand Assise ought by the law to find that the tenant hath more cleere right &c. than hath the disseisor, for this that the tenant hath the right of the disseisee, by his releas, which is more ancient & more cleere right than the right of the disseisor, for by such releas, all the right of the disseisee passeth vnto the tenāt as is in the tenant. And to this some haue sayd, that in such case where a man hath right to lands or tenements (but his entry is not lawfull) if he release vnto the tenant &c. then such release shall enure by way of extinguishment. And vnto this it may bee sayd, that this is truth vnto him ꝯ releaseth, for by his release, he hath dismissed himselfe cleane of his right as to his persō: But yet the right that he had may well passe and go vnto the tenant by his

releas, for it should be inconuenient ꝑ such an ancient right should be extinct all vtterly &c. for it is commonly said, ꝑ right may not dye. But a releas that goeth by ꝑ way of extinguishmẽt against all persõs, is where he to whõ the releas is made, may not haue this ꝑ vnto him is released. As if there be lord & tenant, & the lord releaseth vnto ꝑ tenãt all the right ꝑ hee hath in the lordship, or all the right ꝑ he hath in the Land &c such a releas goeth by way of extinguishmẽt against all persõs, for this that ꝑ tenãt may not haue the same of himselfe In the same maner is a releas made to ꝑ tenãt of the land of a rent charge, or of a cõmon of pasture, for this that the tenãt may not haue that that vnto him is released &c. So such releases goe away by extinguishment against all persons.

Also, to proue that the grand assise ought to passe for the demandãt in the case aforesaid, I haue heard often in the lecture vpon the Stat. of W. 2. that beginneth, In casu quando vir amiserit ꝑ defaltẽ tenemẽtũ qđ fuit ius vxor̃ suæ &c. that at the cõmon law before that statute, if a lease were made to a tenãt for term of life, the remainder ouer in fee, & a strãger by a feyned action recouer against the tenant for term of life by default, & after the tenant dieth, he in the remainder hath no remedy before the statute, for this that hee had no possession of the land, but if he in ꝑ remainder had entred vpon the tenant for terme of life, and disseised him, and after the tenant entreth vpon him, & after

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the tenant for terme of life leſeth by ſuch recouery had by default, and dieth: now hee in the remainder may well haue a writ of Right againſt him that recouered, for this that ỹ miſe ſhalbe ioined only vpon ỹ cleare right. And yet in this caſe the ſeiſin of him in the remainder was defeated by the entrie of the tenaunt for term of life. But peraduenture ſome will argue & ſay, that he ſhall haue no writ of right in this caſe, for this that when the miſe is ioined in ſuch maner, that is to ſay, if the tenãt haue more cleare right to the land in the maner as it is holden, then the demandant hath in the maner as hee demaundeth. And for this that the ſeiſin of the demandant was defeated by the entry of the tenãt for term of life, then he hath no right in the maner as he demandeth. Vnto this it may be ſaid, that thoſe wordes (Modo & forma prout &c.) in many caſes be wordes of the maner of pleading, & no wordes of ſubſtance: For if a man bring a writ of Entre (In caſu prouiſo) of alienation made by the tenant in Dower to his diſinheritance, and pleadeth of the alienation made in fee, & the tenant ſaith that hee aliened not in the manner as the demandant hath declared, and vpon this they be at iſſue, and it is found by verdict that the tenaunt aliened in the taile, or for terme of an others life, the demaundant ſhall recouer, and yet the alienatiõ was not in the maner as the demandant hath declared.

Alſo, if there be Lord and Tenant, and the tenant

tenant holdeth of the lord by fealty onely, & the lord distraineth the tenãt for rent, & the tenãt bringeth a writ of trespas against him L. for his cattell so takẽ, & the lord pleadeth that the tenãt holdeth of him by fealty & certain rẽt, & for the rẽt behind he came to distrain &c. & demãdeth iudgemẽt of the writ brought against him, Quare vi & armis &c. And the other saith that he holdeth not of him in the manner as he supposeth, & vpon this they be now at issue, & it is found by verdict that he holdeth of him by fealty tantũ. In this case the writ shall abate, and yet he held not of the lord in the manner as the lord hath layd, for ꝑ matter of the issue is, whether the tenãt holdeth of him or not: for if he hold of him, though the Lord distraine for other services that he ought not haue, yet such a writ of trespas, Quare vi & armis &c. lyeth not against the Lord but shall abate.

Also, in a writ of trespas of beating, or of goods taken, if the defendant plead not culpable in the manner as the plaintife supposeth, & it is found that the defendant is culpable in another Towne, or at another day than the plaintife supposeth, yet he shall recouer: And in many mo other cases these words, that is to say, in the manner as the demandant or the plaintife hath supposed, bee no matter of substãce of the issue: for in a writ of right where the mise is ioined vpon the cleere right, it is as much to say, & to such effect, that is to wit, whether hath the more right, the tenaunt or

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the demandant to the thing so demanded &c.

Also, if a mã be disseised, & the disseisor dieth seised &c. & his son & heire is in by discent, and the disseisee entreth vpõ the heire of the disseisor, the which entry is a disseisin &c. if the heire bring an assise, or a writ of Right against the Disseisee, hee shall bee barred: For this that when the graund assise is swoorne, their oath is vpon the cleere right, and not vpon the possession &c. for if the heire of the Disseisor had brought an Assise of Nouel disseisin, or a writ of Entre in nature of assise, & recouered against the disseisee, & sued execution, yet may the disseisee haue a writ of Entre in the Per against him of the disseisin made vnto him by his father, or he may haue against the heir a writ of Right: But if the heire ought to recouer against the disseisee in þ case aforesaid by a writ of right, then all his right shal be cleerely gone for this þ a finall iudgement should bee giuen against him, which should be against reason where the disseisee hath more cleere right &c.

And knowe yee my son, þ in a writ of Right after this that the foure Knights be chosen in the graund Assise then there is no greater delay thã in a writ of Formedon, after this that the parties be at issue &c. And if the mise bee ioyned vpon battaile, then there is lesse delay.

Also, a release of all the right &c. in some case is good, made vnto him that is supposed tenant in the law, though he haue noth ng in the tenements, as in a Præcipe quod reddat,

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if the tenant alien the land hanging the writ, & after the demandāt releaseth to him all his right, that release is good, for this that hee is supposed to be tenant by the suit of the demādant, & yet he hath nothing in the Land at the time of the release made. In the same maner it is, if in a Prec' qđ reddat the Tenant vouch, & the voucher enter into the garranty, if after the demaundant release to the voucher all his right &c. this is good ynough, for this that the voucher after this that he hath entred into the garranty, is tenant in law to the demandant.

Also, as to releases of actions reals, and actions personals, it is so, that some actions be mixt in the realty and in the personalty, as if an action of Waste be sued against the tenaunt for terme of life, this Action is in the realtie, for this that the place wasted shall be recouered. And also it is in the personalty, for this that the treble dammage shalbe recouered for the wrong & waste done by the tenāt, & for this in this Action a releas of actions reals is a good plee in barre, and so is a releas of actions personals. In the same maner it is in Assise of Nouel disseisin, for this that it is mixt in the realty and in the personalty. But if such assise be arreigned against the disseisor, the tenāt of the disseisor may plead a releas of all actions personals for to barre the Assise, but not a releas of actiōs reals, for none shal pled a releas of actions reals in assise, but the tenants &c.

Also, in such actions that ought to be sued against

against the tenant of the franktenement, if the tenãt haue a releas of all actions reals of the demandant made vnto him before ẏ writ purchased, and he pleadeth it, this is a good plee for the demãdant to say that he that pleadeth that plee had nothing in the Franktenement at the time of the release made, for that hee had no cause to haue action reall against him.

Also, in such case where a man may enter in landes or tenements, & may also haue of this an act on reall which is given vnto him by the law against the tenant: if in this case the demandant releaseth to the tenant all manner actions reals, yet this taketh not away the entry of the demaundant, but the demaundant may well enter, notwithstanding such releas, for this that nothing is released but the action &c. In the same manner it is of things personels: As if a man wrongfully take my goods, if I release vnto him all actions personals, yet I may by the Law take my goods out of his possession.

Also, if I haue cause to haue a writ of Detinue of my goods against another, though that I release vnto him all actions personals, yet I may take my goods out of his possession, for this that no right of goods is released to him but onely the action, &c. Also if a man bee disseised, and the Disseisour maketh a Feoffement vnto diuers persons to his vse, and the Disseisour continually taketh the profites, &c. and the disseise releaseth vnto him all actions reals,

reals, and after he sueth against him a writ of Entre in nature of assise, because of the statute for this that hee taketh the profits: Inquire how the Disseisor shall bee holpen by the said release, for if he will plead the release generally, then the demandant may say that he had nothing in the franktenement at the time of the release made, and if he plead the release specially, then it behoueth him to knowledge a disseisin and then may the demandant enter in the land &c. by his confesance of the disseisin, &c. But peradventure by special pleading he may bee barred of the action that hee sueth, &c. though that the demandant may enter, &c.

Also if a man sue Appeale of Felony of the death of his ancestor against an other, though the appellat release vnto the defendant all maner actions reals and personals, this shall not helpe the defendant, for this that this appeale is not an action real, insomuch that the appellat shal not recouer any realty, nor such appeal is no action personall, insomuch that the wrong was vnto his Ancestor and vnto him: but if he releas to the defendant all manor of actions then it shall bee a good barre in appeale. And so a man may se that a release of all maner of actions, is better then a release of actions reals and personals, &c.

Also, in appeale of robbery, if the defendant wil plead a release of the appellant of all actions personals, this seemeth no plee, for an action of appeale where the appellant shall haue iudge-

iudgement of death, &c. is more high then an action personall, and it is not properly said an action personall, and therfore if the defendant will haue the release of the appellant to barre him of the Appeale, it behoueth him to haue a release of all maner of Appeales, or a Release of all maner of actions, as it seemeth &c. But in Appeale of Mayhem, a release of all manner of actions personals is a good plea in barre, for this, that in such an action he shall recouer but damm̃ages.

Also, if a man be outlawed in an action personal by proces of the original, & bring a writ of Error, if he at whose suit he was out lawed will plead against him a release of actions personals, this seemeth no plee, for by the said action, he shall recouer nothing in the personaltie, but all only to reuerse the vtlawry: But a release of a writ of Error shalbe a good plee &c.

Also, if a man recouer debt or damage, & hee release to the defendant all manner of actions, yet hee may lawfully sue execution by Capias ad satisfaciendū, or by Elegit, or by Fieri facias, for execution by such writs may not bee said an Action, but if after a yeare and a day the plaintife will sue a Scire facias to haue execution, &c. then it seemeth a release of all actions shall be a good plea in barre: But some haue thought the contrary, insomuch that the writ of Scire Facias is a writ of execution, and is to haue execution. But insomuch that vpon the same writ ỹ defendant may plead diuers matters

ters after the iudgmēt giuen to put him from execution, as vtlawry, & diuers other &c. therfore it may well be said actiō &c. and I trow ẏ in a Scire facias out of a fine, a releas of al maner of actiōs is a good plea in bar, but where a mā hath recouered det or damage, & it is accorded betweene them, ẏ the plaintife shall not sue execution, then it behooueth that the plaintife make a releas to him of all maner executions.

Also if a man releas to an other all manner demands, this is the most best releas that hee to whom the releaie is made can haue, & most shal enure to his aduātage, for by such release of all maner of demands, all maner of actions reals & personals, and actions of appeales bee gone and extinct, & all maner of executions be gone & extinct: and if a man hath title to enter in any lands or tenements, by such releas his title is gone. And if a man haue rent seruice, or rent charge, or cōmon of pasture &c. by such releas of all maner demaunds to the tenant of the land, whereof the seruice, or the rent is going out, or in what land soeuer the common be, the seruice and rent, and the common is gone and extinct, &c.

Also, if a man releas to another all manner quarrels, or all controuersies or debates betweene them, Inquire to what matter, and to what effect such words doe extend.

Also if a man bee bound by his deed to another in a certaine summe of mony to pay at the feast of S. Mich. then next following &c. if the

obliger

obligée before the said feast releas to the obligor all actions he shalbe barred of the duty for euer, & yet he might haue no action at the time of the releas made. But if a man let land to another for terme of yeres, to yeld at the feast of S. Mich. next insuing xl.s. & before ỹ same feast he releaseth to the lesee all actions, yet after the same feast he shal haue an action of debt for the non payment of the xl.s. notwithstanding the said releas. Study the cause of the diuersitie betweene these ij. cases.

Also, where a man will sue a writ of right, it behoueth that he plead of the seisin of himselfe or of his ancestors, & also that the seisin was in time of the same king, as he pleadeth in his plee, for this is an auncient law vsed, as it appeareth by report of a certaine plee, in such forme as insueth. Sir J. Warrey brought a writ of right against Rainold Athlington, & demaunded certain tenements &c. the mise was ioined in the banke, & the originall & the proces were sent before Iust. errants, where the parties came, & the xij knights were sworne, without challenge of the parties to be allowed, for this ỹ the election was made by assent of the parties, with the 4. knights, & the oath was such, That I shall say trueth &c. whether R. of B. haue more right to hold the tenements that J. Warrey demanded against him by his writ of right, or John to haue the tenemẽts as he demandeth, & for nothing to let to say the trueth, as God me helpe &c. without saying to their

knowledge, & such oth shalbe made in attaint, and in battell, & in waging of law, for those do bring euery thing vnto an end: but I. B. pleaded of the disseisin of one Rate his auncestor in the time of K. H. & Reinold vpō the mise ioined tendred half a mark for the time &c. & vpō this Heile Iustice said to the grand assise, after that they were charged vpon the cleere right. Gowmen, Reinold gaue halfe a marke to the King for that time, to the intent that if ye find þ the auncestor of I was not seised in the time that the demandant hath pleaded, you shall inquire no further vpon the right, & for this ye shal say to vs whether þ ancestor of I. Rate by name, was seised in the time of K. Henry as hee hath pleaded or not: & if yee find that hee was not seised in the time, ye shall inquire no more, & if ye find þ he was seised, then inquire further of the right: and after the grand assise came with their verdit & said that Rate was not seised in the time of K. Henry, whereby it was awarded that Reinold should hold the tenemēts against him demanded to him and to his heyres quite of I. Barrey and his heires, to the remnant, and John in the mercy.

Confirmation.

A Deed of confirmation is most commonly in such forme, or to such effect. Noverint vniuersi &c. me A. de B. ratificasse, approbasse & confirmasse C. de D. statū & possessionē quos habeo, de, & in vno messuag. cū ptin' in N. &c. And in some case a deed of confirmatiō is good & vail-

able

able, where in the same case, a deed of releas is not good nor vallable. As I let land to a man for term of his life, the which letteth the same land to another for xl. yeares, by force of the which he is possessed, if I by my deed confirme the state of the tenant for terme of yeres, & the tenant for terme of life dieth during the terme of yeares, I may not enter in the land during ȳ same term, yet if I by my deed of releas haue released to the tenant for terme of yeres in the life of the tenāt for terme of life, the releas shal be void, for this, that then no priuity was betwēn me & the tenant for terme of yeres, for a releas is not auaileable to the tenant for term of yeres, but where a priuity is betwēne him & him that releaseth. In the same manner it is if I bee disseised, & the disseisor maketh a lease to another for term of yeres, if I release vnto the termor, ȳ is void: but if I cōfirm the estate of the termor, that is good & effectuall. Also, if I be disseised, & I confirme the state of the disseisor, thē hath he a good & rightful estate in fee simple, though that in the deed of confirmation no mention is made of his heires, for this that he had Fee simple at the time of ȳ confirmatiō: for in such case if the disseisee confirm the state of ȳ disseisor, to haue & to hold to him for term of his life, yet the disseisor hath Fee simple, & is seised in his demeasn as of Fee, for this ȳ when his estate was cōfirmed, he hath fee simple. & in such deed he may not chāge his estate without entry vpō him &c. In ȳ same maner it is, if the

estate be cõfirmed for term of a day, or for term of an houre, he hath a good estate in fee simple, for this, ẏ his estate in fee simple was once cõfirmed, for cõfirmare, idẽ est qđ firmũ facere.

Also, if 2. be disseisors, & the disseisee releaseth to the one, hee shall hold his fellow out of the land: But if the disseisee confirme the estate of one without more speech in the deed, some say that he shal not hold his fellow out, but he shal hold ioyntly with him, for this, ẏ nothing was confirmed but his estate that was ioint: & for this some haue said, that if 2. ioyntenants be, & the one confirmeth the estate of the other, that he hath but a ioint estate as he had before. But if he haue such words in the deed of cõfirmation, to haue & to hold to him & to his heires all the tenements wherof mention is made in the confirmation then he hath estate sole in the tenemẽts, & therfore it is a good & a sure thing in euery cõfirmatiõ, to haue these words, to haue & to hold the tenements &c. in fee, or in fee taile, or for terme of life, or for terme of yeares after or as the cause or matter is: for to thintent of some, if a man let land to another for terme of life, and after he confirmeth his estate by these words, to haue & to hold his estate to him & to his heires, this confirmation as concerning his heires is void, for his heires cannot haue his estate which was but for terme of life, but if he cõfirme his estate by these words, to haue the same land to him & to his heires, this confirmation maketh fee simple in this case to him

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in the land, for this, that these words, to haue & to hold &c. goeth to the lād, & not to the estate that he hath &c. Also if I let certaine land to a woman sole for term of her life, the which taketh a husband, & after I confirm the estate to the husband & to the wife for term of their two liues, in this case ꝑ husband holdeth not iointly with the wife, but holdeth in the right of his wife for term of his life: but this confirmation shal enure to the husbād by way of remainder for term of his life, if he suruiue his wife. But if I let lād to a womā sole for terme of yeres, which taketh a husband, & after I cōfirm the estate to the husband and the wife, for term of both their liues, in this case they haue ioint estate in the frankstenemēt of the land, for this that the wife had no frankstenement before.

Also, if a parson of a church charge the glebe of his church by his deed, & the Patron & the Ordinary confirm the same grant, & all this is cōprised within the same grant, ꝑ same grant shal be in his strength after the purpose of the same grant: but in such case it behoueth that the patron haue fee simple in the aduowsō, for if he haue estate in ꝑ aduowsō for term of life, or in taile, thē the grant shal stand but during his life, & the life of the parson ꝑ granted it &c.

Also, if a man let land for term of life, which tenant for term of life chargeth the land with a rent in fee, & he in the reuersion confirmeth the same graunt, this charge is good inough & effectual. And if there be a perpetuall chantry,

wherof the Ordinary hath nothing to meddle not to do, the patron of the chantry, & the chaplain of the same chãtry may charge the chãtry with a rent charge in perpetuity. Also in some case these verbs Dedi & concessi, haue the same effect in substãce, & shal enure to the same intent as this verb cõfirmaui: as if I be disseised of a plough land, & after I make such a deed &c Sciant prẽsẽtes &c. qd dedi to the disseisor the said plough land &c. And if I deliuer only the deed to him without liuery of seisin of the land, that is a good confirmatiõ & as strõg in the law, as if he had in the deed this verbe cõfirmaui &c.

Also, if I let lãd to a man for terme of yeres by force of which he is possessed, & after I make him a deed &c. qd dedi, vel cõcessi &c. the same land, to haue for terme of his life, & deliuer him the deed, then by & by he hath estate in the land for terme of his life, & if I say in ꝑ deed, to haue to him & to his heires of his body ingẽdred, he hath estate in the taile, & if I say in the deed, to haue & to hold to him & to his heires, he hath estate in fee simple, for this shal enure to him by force of confirmatiõ to inlarge his estate. Also if a mã be disseised, & the disseisor dieth seised, & his heire in by discẽt, after ꝑ disseisee & the heir of the disseisor make to onely a deed to another in fee, & liuery of seisin vpõ this is made, as to the heire of the disseisor that inclaeth the deed, the tenemẽts passe by the same deed by way of recõuemẽt, & as to ꝑ disseisee ꝑ inclaeth the same deed, this shall not enure but by the way of cõfirma-

firmatiõ: but if the disseisee in this case bring a writ of Entrie in the (Per & Cui) against the aliener of the heir of the disseisor, inquire how he shall plead the deed against the demandant by way of cõfirmation &c. And know this my child, that it is one of the most honorable, laudable, & profitable things in our law, to haue the science of wel pleading, in actions reals & personals, & for this I counsell thee, especially to set thy courage and care to learne that.

Also, if there be lord & tenant, and the Lord confirmeth the estate that the tenaunt hath in the tenemẽts, yet the seignior wholly abideth to the lord as it was before. In the same manner it is if a mã haue a rent charge out of certaine land, and he confirmeth the state that the tenant hath in the land, yet abideth to the confirmor the rent charge. In the same maner it is if a man hyre cõmon of pasture in the land of any other, if he confirmeth the state of the tenant of the land, nothing shal depart from him of his common, but this notwithstanding the common abideth to him as it was before.

But if there be Lord & tenant, which holdeth of his lord by seruice of Fealtie, & xx.s. of rent, if the lord by his deed confirme the estate of the tenant to hold by xij d. j.d. or by an ob. in this case the Tenant is discharged of all other seruices, and shall yeelde nothing to the Lord, but that that is comprised within the same confirmation, yet if the Lord will by the deed of confirmation, that the tenaunt in this

caſe ought to yeld to him a Hauke, or a Roſe yearely at ſuch a feaſt &c. this reſeruation is void, for this that he reſerueth to him a new thing that neuer was parcell of the ſeruices before the confirmation, and ſo the Lord may abridge the ſeruices by ſuch confirmation, but he may not reſerue to him a new ſeruice &c.

Alſo, if there be Lord, Meine, & tenant, & the tenant is an Abbot that holdeth of the meine by certaine ſeruices yearely, the which hath no cauſe to haue acquitãce againſt his meine for to bring a writ of Meine &c. in this caſe if the meine confirme the eſtate that the Abbot hath in the land, to haue and to hold the Land vnto him & his ſucceſſors in frankalmoigne, or free almes &c. in this caſe this cõfirmatiõ is good, & then the Abbot holdeth of the meine in frãkalmoigne: & the cauſe is for this, þ no new ſeruice is reſerued, for all þ ſeruices ſpecially ſpecified be extinct, & nothing is reſerued to the meine, but the Abbot ſhall hold the land of him as it was before the confirmation, for he that holdeth in frãkalmoign ought to doe no bodily ſeruice, ſo that by ſuch cõfirmatiõ it appeareth þ the meine ſhall not reſerue vnto him no new ſeruice, but that the lands ſhalbe holden of him as it was before, & in this caſe the Abbot ſhal haue a writ of meine, if he be diſtrained in his default, by force of the ſaid cõfirmation, where peraduenture he might not haue ſuch a writ before &c.

Alſo if I be ſeiſed of a villein, as of a villein in groſſe, & another taketh him out of my poſ-

ſeſſion

lellion claiming him to be his villein, whereas he hath no right to haue him as his villeine, & after I confirme the estate to him that he hath in my villein, this confirmation somethe void, for this, that none may haue possessiō of a man as of a Villeine in grosse, but hee which hath right to haue him as his villein in grosse, and insomuch that hee to whom the confirmation was made, was not seised of him as of his villeine at the time of his confirmation, such confirmatiō is void: but in this case if such words were in the deed, Sciatis me dedisse & confirmasse tali &c. tale villenum meum, this is good, but this shal enure by force and way of grant, and not by way of confirmation &c.

Also sometimes these verbes (Dedi & concessi) enure by way of extinguishment of the thing giuen or graunted. As a tenāt holdeth of his lord by certaine rent, & the lord by his deed granteth to the tenāt & to his heirs p̄ rent &c. this shall enure to the tenant by way of extinguishment, for by this grāt the rent is extinct. In the same maner it is, where one hath a rēt charge of certain land, & he granteth to the tenant of the land the rent charge, and the cause is for this, that it appeareth by the words of the grant, that the will of the donor is, that p̄ tenant shall haue the rent &c. insomuch that he may haue no rent out of his own lād, for this, the deed shalbe vnderstood & taken for the most aduantage & auaile of the tenant that it may be taken, & that is by way of extinguishment.

Also

Also, if I let lād to a man for term of yeres, and after I confirme his estate without moe wordes put in the deed, he hath no greater estat but for terme of yeres, as he had before: But if I releas to him my right that I haue in the lād without mo wordes put in the deed, he hath estate of Franketenement. And so maist thou my child vnderstād great diuersities betwen releases & confirmations. And if I bee within age, & let land to one for term of xx. yeres, and he granteth the land for terme of x. yeares, so that he granteth but parcell of the terme: In this case whē I am of ful age, if I releas vnto the grauntee of the lessee, &c. this release is void, for this, that there is no priuity betwen him & me. But if I confirm his estate, thē this confirmation is good: But if my lessee graunt all his estate to another, then my releas made to the grantee is good and effectuall.

Also, if a man grāt a rent charge out of his land to another for terme of his life, & after he cōfirmeth his estate in the same rent, to haue & to hold to him in Fee taile, or in fee simple, this confirmation is void, as to the inlarging of his estate, for this, that hee that confirmeth had no reuersiō in the rent: But if a man be seised in fee of rent seruice, or of rent charge, & he granteth the rēt to another for term of life, & the tenant attorneth, & after he confirmeth the estate of the grātee in fee tail, or in fee simple, this cōfirmation is good as to inlarge his estate after the wordes of the deed of cōfirmation, for this

that

that he that confirmed the estate at the time of the confirmation had the reuersion of the rent &c. But in this case aforesaid, where a man granteth a rent charge to another for term of life, if he will that the grantee shall haue estate in the taile, or in fee, him behoueth that the deed of the grãt of the rent charge for terme of life, bee surrendred or cancelled, & then to make it a new deed of such a rent charge, to haue and to take to the grãtee in the taile, or in fee, Ex paucis dictis intendere plurima possis.

Attournement

ATtournement is, if there be Lord and Tenant, and the Lord will grant by his deed the seruice of his tenant to an other for terme of yeres, or for term of life, or in taile, or in fee, it behoueth that the tenãt attourn to the grãtee in the life of the grantor by force & vertue of the grant, or otherwise the grant is void. And attournment is none other thing in effect, but when the tenant hath heard of the grant made by his Lord, that the same tenant by word agree to the said grant, as to say to the grantee I agree me to the grant made to you, or I am well content of the grant made to you &c. But the more common attournment is to say, Sir, I attourne to you by force of the same grant, or I become your tenant &c. or to deliuer vnto the graunter j.d. ob. or farthing, by way of attournement &c.

Also, if a man bee seised of a mannor, which manor is parcel in demesn, & parcel in seruice,

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if he will alien such a manor to another, it behoueth that by force of the alienatiõ all the tenãts that hold of the alienor (as of this manor &c.) attourne to the Alienee or otherwise the seruices abide cõtinually in the alienor, except tenãts at will, for it needeth not that tenãts at will attorn vpõ such alienation &c. for this that the same lãds or tenements ỹ they hold at will do passe to the alienee by force of such alienatiõ

Also, if there be lord and tenant, and the tenant letteth the tenements to a man for terme of life, the remainder to another in Fee, if the lord grant the seruices to the tenant for terme of life in fee, in this case the tenant for term of life hath fee in the seruices, but the seruices be put in suspence during his life, but his heires shall haue the seruices after his death, and in that case it needeth not attournement, for by the acceptance of the deed of him that ought to attourne, this is attournement in it selfe &c. But where the tenant hath as great and high estate in the tenements as the Lord hath in the seignioze, in such case if the Lord graunt the seruice vnto the tenant in fee, this enureth by way of extinguishment, Causa patet.

Also, if there be lord & tenant, & the tenant maketh a leas to one for term of life, sauing ỹ reuersion vnto him, if the Lord grant the seignioze to the tenãt for term of life in fee, in this case it behoueth that he in the reuersiõ attorn to the tenãt for term of life by force of ỹ grant, or otherwise the grant is void, for this that he

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in the reuerſion is tenant to the Lord.

Alſo, if there bee Lord and tenant, and the tenant holdeth of the Lord by twentie maner of ſeruices, and the Lord graunteth his ſeigniorie to an other, if the tenant pay or doe any of the ſeruices to the grauntee, this is a good attournement, of and for the ſeruices, though that the tenants intent was to attorne but of the ſame parcell, for this that the Seigniorie is an whole thing, though that there be diuers maner of ſeruices that the tenant ought to doe.

Alſo, if there bee Lord and tenant, and the tenant holdeth of the Lord by many maner of ſeruices, and the Lord graunteth the ſeruices to an other by fine, if the grauntee ſue a Scire facias out of the ſame fine, for any parcel of the ſeruices, and had iudgement to recouer, this iudgment is a good attornement in the Law for all the ſeruices.

Alſo, if the Lord of the rent granteth the ſeruices vnto an other, and the tenant attourneth by a penp, and after the grauntee diſtraineth for rent behind, and the Tenaunt to him maketh reſcous: In this caſe the grauntee ſhall haue no Iſſue of the rent, but hee ſhall haue a writ of Reſcous, for that the gift of the penp was but by way of attournement. But if the tenant had giuen vnto the grauntee the ſaid penp as parcell of the rent, or a halfe penie, or a farthing, by way of ſeiſin of the rent, then this is a good attournement, and alſo it

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is a good seisin to the grantee of the rent, and then vpon such reseous the grantee shall haue an Assise, &c.

Also, if a man let Tenements for terme of peres, by force of which the lesse is seised, and after the Lord granteth by his deed the reuersion to another for terme of life, or in taile, or in fee, it behoueth him in this case that the tenant for terme of peres attourne, or otherwise nothing passeth to such grantee by such deed. And if in this case the tenant for terme of peres attorne to the graūtee, then by a by passeth the Franktenemēt to the grantee by such attornement, without any liuery of seisin, &c. for this, if any liuery shall bee made, or needeth to bee made in such case, then the tenant for terme of peres shall be at the time of the liuery of seisin out of his possession, which should bee against reason.

Also, if Land bee let to a man for terme of yeares, the remainder to another for terme of life, reseruing to the lessor a certain rent by the yere, and liuery of seisin is made vpon this to the tenant for term of peres, if he in the reuersion in such case grant his reuersiō to another, &c and the tenant that is in the remainder after the terme of peres attorneth, this is a good attournement, and hee to whom the reuersion is granted, by force of such attournement shall distraine the tenant for terme of peres for the rent due after such attournement, though the tenant for terme of peres neuer attorned vnto him,

him, and the cause is for that, where the reuer-
sion is dependant vpō the state of Franktene-
ment, it sufficeth that the tenāt of the Frank-
tenement attorne vpon such graunt of reuer-
sion, &c. And it is to wit, that where a lease for
terme of yeeres, or for terme of life, or a gift in
the taile is made to any man, reserving to such
a lessor or donor certain rent, if such a lessor or
donor grant his reuersion to another, and the
tenant of the land attorne, the rent passeth to
the grantee, though in the deed of the grant of
reuersion, no mention is made of the rent, for
this that the rent is incident to the reuersion
in such case, a nota conuerso, for if a man will
grant the rent in such case vnto another, refer-
ring to him the reuersion of the land, though
the tenant attorne to the grantee, this shall be
but a rent secke, &c.

Also, if a man let land to another for terme
of life, & after such lease he confirmeth by a deed
the estate of the tenant for terme of life, the re-
mainder to another in Fee, and the tenant for
terme of life accepteth the deed, then is the re-
mainder indeed to him to whom the remainder
was giuen or limited in the same deede, for by
the acceptance of the tenant for terme of life of
the same deed, this is a grāt of him, & so an at-
tornement in law: but yet he in the remainder
shal haue none action of waste, nor other bene-
fit by such remainder, but if hee haue the same
deed in his hand by which the remainder was
graunted vnto him, & for this that in such case

the

the tenant for terme of life will retaine to him the deed, to the intent that he in the remainder shall not haue an action of waſt againſt him, for this that he may not come to haue the poſſeſſion of the deed, &c. It ſhall bee good in ſuch caſe for him in the remainder, that a deed indented be made by him that will make the confirmation, and the remainder ouer &c And he that maketh ſuch confirmation deliuer a part of the Indenture to the Tenant for terme of life, and the other part to him that hath the remainder, and then he by ſhewing of the part of the Indenture, may haue an action of waſt againſt the tenant for terme of life, & alſo other aduantage, that he in the remainder may haue in ſuch caſe.

Alſo, if two Iointenants be, which let land to an other for terme of life, reſeruing to them and their heires a certaine rent by yeare: In this caſe if one of the two Iointenants in the Reuerſion releaſe to the other Iopntenaunt in the ſame reuerſion, this releaſe is good, and he to whom the releaſe is made ſhall haue only the rent of the tenant for terme of life, and ſhall haue a writ of waſt againſt him, though he neuer attorned by force of ſuch releaſe. And the cauſe is, for the priuity that once was betweene the tenant for terme of life, and them in the reuerſion.

In the ſame maner, and for the ſame cauſe it is where a man letteth Land to an other for terme of his life, the remainder to another for

for terme of his life, reseruing the reuersion to the lessor, in this case if he in the reuersion release to him in the remainder &c. & to his heires all his right &c. then he in the remainder hath a fee &c. and shall haue a writ of waste against the tenaunt for terme of life without any attournement of him, &c.

Also, if a lease be made for terme of life, the remainder vnto an other in the taile, the remainder ouer to the right heires of the tenant for terme of life, in this case if the tenaunt for term of life grant his remainder in fee to another by his deed, the remainder by & by passeth by his deed without any other attornment: For if that any ought to attorn in this case, it should be ꝑ tenāt for terme of life. And it were in vaine ꝑ he attorne vpon his own grant &c.

Also, if there be lord & tenant, and the tenāt holdeth of the Lord by certain rent & knights seruices, if the Lord grant the seruices of the tenant by fine, the seruices be by and by in the grauntee by force of the fine, but yet the Lord may not distrain for any parcel of his seruices without attornement. But if the tenant die, his heires being within age, the lord shall haue the ward of the body of the heire & of the land &c. howbeit that hee neuer attorned: for this that the seignory was in the grantee maintenant by force of the fine.

And also in such case if the tenant die without heire, the Lord shall haue the tenancie by way of Escheat. In the same maner it is if a

man grant the reuersion of his tenāt for terme of life to another by fine, the reuersion passeth presently to the grauntee by force of the fine, but the grantee shal neuer haue action of wast without attornement &c. But yet if the tenant for terme of life alien in Fee, the grantee may enter as for this that the reuersiō was in him by force of the fine, and such alienation was to his disinheritance. But in this case where the Lord graunteth the seruices of his tenant by fine, if the tenāt die, his heire being of full age, the grantee by the fine shal not haue the reliefe, nor neuer shall distraine for the reliefe, except there had been some attornement of the tenāt that died, &c. For of such things that lye in distresse, vpon the which a writ of Replegiare is sued &c. a man ought to auow the taking good and righteous, &c. and there ought to bee attournement of the tenant, howbeit that the grant of such seruices be by fine. But to haue ward of lands & tenements so holden during the nonage of the heir, or them to haue by way of Escheat, there needeth not any distresse, &c. but an entrie in the land by force of the right of the seigniory that the grantee hath by force of the fine.

Also, in auncient Boroughes or Cities where tenements within the same boroughes or Cities beene deuisable by testament by the custome and the vse, &c. if in such Borough or Citie a man be seised of rent seruice, or of rent charge, and he deuiseth such rent or seruice to ano-

another by his testament & dieth &c. In this case hee to whom the deuise is made, may distraine for the rent or the seruices behind, howbeit that the tenant neuer attourned. In the same maner it is, where a man letteth such tenements deuisable to another for terme of life, or for terme of yeeres, & deuiseth the reuersion by his testamẽt to another in fee, or in fee taile, and dieth, and anon after that the tenaunt maketh wast, hee to whom the deuise was made shall haue a writ of waste, howbeit that the tenant neuer attourned: and the cause is for this, that the will of the deuisor made by the testament, shall bee performed after the intent of the deuisor, & if the effect of this should bee vpon the attourning of the tenant &c. then percase the tenant would neuer attourne, & then the will of the deuisor would neuer be performed, and therfore the deuisee shall distraine, or haue an action of wast without attornement. For if a man deuise such tenements to another by his testament (habend' sibi imperpetuum) and dieth, and the deuisee entreth, he hath a fee simple, Causa qua supra, and yet if a deede of feoffement were made to him by the deuisor of the same tenements (habendũ & tenendũ sibi imperpet) and liuery and seisin were thereupon made, hee shall haue none estate but for terme of life, &c.

Also, if a man be seised of a mannour which is parcell in demeine, and parcell in seruices, and therof bee disseised, but the tenaunt

ſwhich holdeth of the mannor, neuer attorneth to the diſſeiſor: in this caſe, howbeit that the diſſeiſor die, &c. and his heire is in by diſcent, yet may the diſſeiſee diſtrain for the rent being behind, & haue the ſeruice: But if the tenants come to the diſſeiſor, & ſay, we become your tenants, &c. or otherwiſe make attournement to him, &c. and after the diſſeiſor dieth ſeiſed, &c. then the diſſeiſee may not diſtrain for the rent, for this ꝑ all the mannor deſcended to the heire of the diſſeiſor. But if one hold of me by rent ſeruice, ſwhich is a ſeruice in groſſe, & another that no right hath, claimeth the rent & receiueth and taketh the ſame rent of my tenant by coherſion of diſtreſſe, or by other force, and ſo diſſeiſeth me by taking ſuch rent, howbeit that ſuch a diſſeiſor die ſeiſed by ſuch taking of the rent, yet after his death I may well diſtraine for the ſame rẽt being behind before the death of the diſſeiſor, and alſo after his death: & the cauſe is this, that ſuch is not by diſſeiſor, but by election at my will; for howbeit that he tooke the rent of my tenaunt, I may at all times diſtrain my tenant for the rent behind &c. ſo it is to me, but as if I will ſuffer the tenant to be by ſo much time behinde of payment to me of the ſame rent: for the payment of my tenant to an other to whō hee ought not to pay, is no diſſeiſin to me, nor ſhall not put mee out of my rent, ſwithout my will and election, for howbeit that I may haue Aſſiſe againſt ſuch a taker &c. yet this is at my election if I will take him as my

diſſeiſe:

diſſeiſor or not, ſo that ſuch diſcents of rents in groſſe ne putteth not out the lords from their diſtreſſe, but that at each time they may well diſtraine for the rent behind: And in this caſe if after the deceaſe of him that ſo wrongfully tooke the rent, I grant by my deed the ſeruices to another, & the tenant attorneth, this is good enough, & the ſeruices by ſuch grant & attornment, incontinent be in the grantee, &c. But otherwiſe it is where the rent is parcell of the mannor, & the diſſeiſor dieth ſeiſed of the whole mannor, as in the caſe before ſaid.

Diſcontinuance.

DIſcontinuance is an auncient word in the law, and hath diuers ſignifications &c. but as to one intent it hath ſuch a ſignification, that is to ſay, where a man hath aliened to another certaine lands or tenements & dieth, and another hath right to haue the ſame landes or tenemẽts, but he ne may enter in them, becauſe of ſuch alienation &c. As if an Abbot be ſeiſed of certain lands & tenements in fee, and he alieneth the ſame lands & tenements to an other in fee, or in taile, or for term of life, & the Abbot dieth, his ſucceſſor may not enter in the ſame lands and tenements, howbeit that hee haue right to haue them as in the right of the houſe but he is put to his action to recouer the ſame lands or tenements which is called a writ de Ingreſſu ſine aſſenſu Capituli.

And if a man be seised of land as in the right of his wife &c. and therof infeoffeth another &c. and dyeth, the wife may not enter, but she is put vnto her action, the which is called Cui in vita. See stat 32. H. 8. c. 28. Leases.

Also, if tenant in the taile of certaine land thereof infeoffe another, &c and hath issue and dieth &c. his issue may not enter in the land, howbeit that hee hath right and title to that, but that he is put to his action, that is called a Formedon in the discender.

Also, if there bee tenant in taile, and the reuersion is to the donor and to his heires, if the tenant make a feoffement &c. & dieth without issue, he in the reuersion may not enter, but is put to his action of Formedon in the reuerter. And in the same maner it is where there is tenant in the taile of certaine land where the remainder is to another in the tayle, or to another in fee, if the tenant in the tayle alieneth in fee, or in fee taile &c. & after dieth without issue they in the remainder may not enter, but bee put to their writ of Formedon in the remainder &c. and for this that by force of such feoffement, and such alienations in the cases aforesayd, and in like cases those which have title and right after the death of such a Feoffor or alienor, may not enter, but be put to their actions vt supra, therefore such Feoffements and alienations be called discontinuances.

Also, if a tenant in the taile be disseised, & he releaseth by his deed to the disseisor, and to his heires

heires all the right ꝑ he hath in the same land, this is no discõtinuance, for this that nothing of right passeth to the disseisor but for terme of life of the tenant in the taile that made the release &c. But by the feoffment of tenant in the taile a fee simple passeth by the same feffement by force of liuery of seisin &c. but by force of a release, nothing passeth but the right ꝑ he may lawfully & rightfully release without hurt or damage to other persons which thereto haue right after his decease &c. & so it is a great diuersity betwœn a feffemẽt of the tenant in the taile, & a releas of the tenant in the taile. But it is said, that if tenant in the taile in this case release to the disseisor, and bindeth him & his heires to warrantize &c and dieth, & this warranty discendeth to his issue, then that is a discontinuance because of warrantize &c. But if a man haue issue a son by one wife which dyeth, & after he taketh another wife, & the tenements bee giuen to him & his second wife, and to the heires of their two bodies engendred, & they haue issue another sonne, then the second wife dyeth, and after the tenant in the tayle is disseised, and he releaseth to his disseisor all his right &c. and bindeth him and his heires vnto warrantize, & dieth, this is no discontinuance to the issue in the tayle by the second wife, but hee may well enter &c. for this that the warrantize descended to his elder brother that his father had by his first wife.

In the same maner where the tenements be

discẽdable to the ponger son after the custom of borough English, which be intailed &c. and the tenãt in ꝑ taile hath issue .. sons & is disseised, & he releaseth to his disseisor all his right with warrãty & dieth, the ponger son may enter upon the disseisor notwithstãding the warrãtize, for this that the warrantize descendeth to the elder son, for alwap the warrãtize descendeth &c. to him that is heire by the common law.

Also, if an Abbot be disseised, & hee releaseth to the Disseisor with warrantize, this is no discontinuance to his successor, for this that nothing passeth by this release but the right that he hath during the time that he is Abbot, and this warrantize is expired by his pryuation or by his death.

Also, if tenãt in the taile be seised of certain land, and he letteth the same land for terme of yeares, by force of which lease the lessee is in possession, in which possession the tenãt in the taile by his deed releaseth all his right that he hath in the same land to the Lessee and to his heires for euer, this is no discontinuance, but after the decease of the tenant in the taile, his issue may well enter, for this that by such release nothing passeth but for term of life of the tenant in the taile. In the same manner if the Tenant in the tayle confirme the state of the lessee for term of certaine yeres to haue and to hold to him and to his heires, that is no discontinuance, for this, that nothing passeth by such confirmation, but the estate that the tenant

uant in the tayle had for terme of his life.

Also, if a tenant in the taile by his deed grāt to another all his estate that he hath in the tenements entailed to him, to haue & to hold all his estate to the other & to his heirs for euer, & deliuereth seisin accordingly In this case the tenant to whō the alienation was made, hath none other estate but for term of life of the tenānt in tail, & so it may well be proued that the tenant in the taile may not graunt ne alien ne make any rightful estate of the franktenemēt to another person but for term of his own life &c. For if I giue certaine land in the taile to a man, sauing a reuersion to me, & after the tenāt in the taile enfeoffeth another in fee, the feoffee hath no right estate in the tenemēts, for .ij. causes. One is for that that by such feoffement my reuersiō is discōtinued, which is a wrong act & not a rightful act. Another cause is, if the tenāt die, & his issue sueth a writ of Formedon against the feoffee, the writ shall say & also the declaration, that the feoffee wrongfully him deforced, therfore if wrongfully he him deforced, he had no right estate.

Also, if land be let to a man for terme of his life, the remainder to another in the taile, if he in the remainder will grant his remainder to another in Fee by his deed, and the tenant for terme of life attorneth, this is no discontinuance of the remainder.

Also, if a man be tenant in ye taile of auowson in grosse, or of cōmon in grosse, if he by his deed

deed will grant the aduowson or the common to another in fee, this is no discontinuance, for in such case the grantee hath no estate but for term of life of the tenant in the taile that made this grant &c. Note well that such things as passe by way of graunt made by deed, made in the countrey, &c. such grant maketh no discontinuance as in the case aforesaid, & other like cases &c. And howbeit that such be granted in fee, by fine leuied in the kings court &c. yet they make no discontinuance &c.

Also, if a man be seised in the taile of lands deuisable by testament &c. and hee deuiseth it to another in fee, and dieth, and the other entreth, this is no discontinuance, for this that no discontinuance was made in the life of the tenant in the tayle &c.

Also, if an Abbot haue a reuersion, or a rent seruice, or a rent charge, and will graunt that reuersion, rent seruice, or rent charge to another in fee, and the tenant attorneth &c. this is no discontinuance. In the same manner it is where an abbot is seised of an aduowson, or of such things that passe by way of grant without Liuery of seisin &c.

Also, if there bee Graundfather tenant in the tayle, father and sonne, and the Graundfather is disseised by the father, and the father maketh a feoffement in fee without warrantize and dieth, and after the graundfather dyeth, the sonne may well enter vpon the feoffee, for this that this was no discontinuance, in

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so much that the father was not seised by force of the taple at the time of the Feoffement &c. but was seised in Fee by disseisin made to the Grandfather.

Also, if a woman inheritrix have an Husband within age, which maketh a feoffement of the tenements of the wife and dieth, it hath beene questioned if the wife may enter or not, And it seemeth to some men that the entrie of the wife after the death of her husband shalbe lawful in this case, for when her husbād made such a feoffement &c. hee might well enter notwithstāding such feoffement during the coverture, and he might not enter in his own right, but in the right of his wife &c. Ergo such right that he had to enter in the right of his wife &c. that right of entry abideth to the wife &c. after his decease. And it hath been said, that if two Jointenants being within age, make a feoffement in fee, and one of the children dieth, and the other surviueth, insomuch that both childrē might enter iointly in their lines, this right of entry groweth al to him that survmeth, and so he may enter into the whole &c.

Also, the heire of the husband that made the feoffement within age may not enter, for this that no right discendeth to such an heire in the case aforesaid, for this that the husbād had neuer any thing but in the right of the wife. And also when a childe maketh a feoffement being within age, this shall neuer grieue nor hurt him, but that he may wel enter &c. & this should

be

be against reason, that such a feoffement made by him that was not able to make such a feffement shall grieue or hurt other, to take other of their entries &c And for these causes it seemeth to some, ỹ after the death of such an husband so being within age at ỹ time of the feffement &c. that his wife may well enter, &c.

Also, if a woman inheritrix taketh an husband and hath issue a sonne, and the husband dieth, & she taketh another husband, and the second husband letteth the land ỹ hee hath in the right of his wife to another for term of his life and after the wife dieth, & after the tenant for term of life surrendreth his estate to the secõd husband &c. Inquire if the sonne of the wife may enter or not, in this case vpon the second husband during the life of the tenãt for terme of life. But it is cleere law in this case, that after the death of the tenant for terme of life, the son of the wife may wel enter, for this that the discontinuãce that was made all only for term of life is determined by the death of the same tenant for terme of life.

Also, if the parson or vicar of a church alien certain lands or tenemẽts parcel of his glebe &c. to another in fee and dieth, or resigneth &c. his successor may wel enter, notwithstanding such alienation, as it is said in a Note Anno 2. H. 4. Termino Mich. quæ sic incipit, Nota quod dictum fuit pro lege, In a writ of Accompt brought by the Master of a Colledge, that if a parson or a vicar grant certaine land

that

that is of ꝑ right of his church to another, and dieth, or chãgeth, that his successor may enter: And I trow the cause is for this, that the parson or Vicar that is seised, &c. in right of the Church hath no right of the Fee simple in the tenements, but the right of the Fee simple abideth to another person: And for this cause his successor may wel enter, notwithstãding such alienation &c for a Bishop may haue a writ of right of tenements of right of his bishoprick&c, for this, that the right of fee simple abideth in him & in his chapter. And a Dean may haue a writ of right &c. for this, that the right abideth in him & in his chapter. And an Abbot may haue a writ of right, for this that ꝑ right abideth in him & in his conẽt, & sic de alijs casibus consimilib' &c. but a parson or a vicar may not haue a writ of right &c. but ꝑ highest writ that they may haue is a writ de iur̃ vtrũ, the which is a great proofe, that the right of fee simple is in abeiance, that is to say, all only in the remẽbrance, intendemẽt, & consideratiõ of the law: for me seemeth that such a thing & such a right that is said in diuers bookes to be in abeiãce, is as much to say in latin, s. talis res, vel tale rectũ quę vel qd' non est in homiñ adtunc superstite, sed tantũmodo est & consistit in consideratione & intelligentia legis &c. & quidã alij dixerunt talẽ rem, aut tale rectũ fore in nubibus &c. But I suppose that they vnderstand these wordes in nubibus &c. as I haue said before.

Also, if a Parson of a Church die, now the frank-

frankstenemēt of the glebe of the parsonage is in no man, during the time that the parsonage is void, but is in abeiance, that is to say, in cōsideration and intelligence of the Law, till an other be made parson of the same church, and immediatly when another is parson, the frāktenement in deed is to him as successor.

Also, some men peraduenture will argue and say, that inasmuch ỹ the parson with the assent of the patron and ordinary, may graunt a rent charge out of the glebe of his parsonage in fee, & so charge the glebe of his parsonage perpetually, Ergo they haue fee simple, or ỹ one of them hath Fee simple at the least &c. so thus it may be answered, that it is a principle in law that of euery land there is a fee simple in some man, or else the fee simple is in abeiāce &c. And another principle is, that euery land of fee simple may be charged with a rent charge in fee, by one way or by another &c. when such rent is granted by the deed of the parson, the patrō & the ordinary in fee, none shall haue no preiudice nor losse by force of such graunt, but the grantors in their liues, and the heire of the patron, a successor of the Ordinary after their deceases, & after such charge if the parson by, his successor may not come to the same Church to be parsō of the same church by the law, but by presentment of the patron, and admission & institution of the ordinary &c. And for this cause it behoueth that the successor hold him content and agreed with that which his Patron and Ordi-

ordinary lawfully haue done before. But the cause that such rent charge is gone, is for this ỹ they which haue entries in the said Church, that is to say, the patron after the law temporal, and the Ordinary after the law spiritual, were assented as parties vnto such a charge, &c. and this seemeth the very cause that such glebe may bee charged in perpetuitie &c. See Stat. 13 Eliz. cap. 20.

Also, if a bishop alien lands which bin parcel of his bishoprycke, & dieth, this is a discontinuance to his successor, for this, that he may not enter, but is put to his writ de Ingressu sine assensu capituli &c. See Stat. 1. Eliz.

Also, if a Deane alien land, parcell of his deanry, and dieth, his successor may not enter, but he may haue a writ de Ingressu sine assensu capituli &c. See Stat. 13. Eliz. cap. 10.

But if the Deane & the Chapter haue land to them and to their successors in common &c. Howbeit that the Deane alien such lands, his successors may well enter, for this, ỹ the frãktenement at the time of the alienation, was as well in the Chapter, as in the Deane. But where the deane is sole seised as in right of his deanry, then such alienation is discontinuance to his successor, as it is afore said.

Also, some men will argue & say, that if an Abbot & his Conent be seised in their demean as of fee, of certain land to them & to their successors &c. & the Abbot without assent of his Conent alieneth the same land vnto another,

and

and dieth, this is a discontinuãce to his succes-
sors &c. & by the same they will say, that where
a Deane & a Chapter is seised of certaine land
to them & to their successors, if the Deane alien
the same lands &c. this shalbe a discontinuance
to his successors, so that his successor may not
enter &c. To this may be answered, that there
is a great diuersity betwixt ẽ said 2. cases, for
when an Abbot & the Conuent be seised, &c. yet
if they be disseised, the Abbot shal haue assise in
his own name, without the naming of his con-
uẽt &c. And if a man may or will sue a Præcipe
quẽ reddat of the same lands whẽ they be in the
hands of the Abbot & his Couent, it behoueth
that such an actiõ bee sued against the Abbot
only without naming of the conuẽt &c. for this,
that all they be dead persons in the Law, saue
only the Abbot that is soueraigne &c. and this
is because of the soueraigntie, &c. for else hee
should bee as the other Monkes of the Co-
uent &c. But the Deane & the Chapter be no
dead persons in the law &c. For each of them
may haue an actiõ by himselfe in diuers cases,
and of such landes or tenements which the
Deane and Chapiter haue in Common, &c. if
they be disseised, that the Deane & the Chapi-
ter shal haue assise, & not the Deane alone, and
if another will haue an actiõ real of such lands
or tenements against the Dean &c. it behoueth
him to sue against the Deane & Chapiter, and
not against the Deane alone, &c. and so appea-
reth great diuersity betweene these two cases.

Also,

Also, if the Master of an Hospitall discontinue certaine land of his hospitall, his successor may not enter, but he is put vnto his writ De ingressu sine assensu Capitratrum & sororum suarum. And all such writs do plainly appeare in the Register &c.

Remitter.

REmitter is an auncient terme in the Law, and it is where a man hath two Titles to lands or Tenements, that is to say, one of an elder Title, & an other of a later Title, and he commeth to the land by the later Title, yet the law adiudgeth him to be in by force of ꝑ elder Title, for this ꝑ the elder title is the more sure Title, and the more worthy Title, and then when a man is iudged in by force of the more elder Title, this is vnto him said a Remitter, for this, that the Law shal admit him to be in the land by the elder title: as if the tenant in the taile discontinue the taile, & after he disseiseth the discontinuee, & so dyeth seised, wherby the Tenements discend to his issue, or to his cosin inheritable by force of the taile: in this case this is to him to whom the tenemẽts discend which had right by force of the taile, a Remitter in the taile, for that, that the Lawe shall put & adiudge him to be in by force of the taile, which is his elder title: for if he shalbe in by force of discent, then the discontinuee may haue a writ of Entry vpon the disseisin in the Per against him, & recouer the tenements, and

his dammages, but insomuch that hee is in by force of the taile, the title & the interest of the discontinuè is all vtterly annulled and defeated &c.

Also, if tenant in the taile enfeoffe in fee his sonne or his cosin inheritable by force of the taile, the which sonne or cosin at the time of the feoffement is within age, and after the tenãt in the taile dieth, and he to whom the feoffement was made is his heire by force of the title in the taile, this is a Remitter to the heire in the taple, to whom the feoffement, is made: For howbeit that during the life of the tenant in the taile that made the feffement, such heire shalbe abridged in by force of the feoffemẽt, yet after the death of the tenant in the tail, ẏ heire shalbe abridged in by force of the taile &c. and not by force of the Feffemẽt, and though that such an heire was of full age at the time of the death of the Tenant in the taile that made the Feoffemẽt, this maketh no matter, if the heire were within age at the time of the Feffement made to him. And if such an heire being within age at the time of the Feffement cõmeth to ful age, liuing the tenant that made the Feffement, & so being of full age, he chargeth by his deed the same land with a common of pasture, or with a rent charge, and after the tenant in the taile dieth: Now it seemeth that the land is discharged of the common, and of the rent, because the heire is in by another estate in the Land, then hee was at the time of the charge made

made, insomuch ỹ he is in his remitter by force of the taple, & so the estate that hee had at the time of the charge is vtterly defeated &c.

Also a principal cause why such an heire in the cases aforesaid, and other cases semblable shall bee said in his Remitter, is for this, that there is no person against whom that he may sue his writ of Formedon, for against himselfe he may not sue, & hee may not sue against none other, for none other is tenant in the Franke-tenement, and for that cause the law adiudgeth him in his Remitter, that is to say, in such plight, as hee had lawfully recouered the same land against another.

Also, if land be tailed to a man and his wife and to the heires of their two bodies engendred, the which haue issue a daughter, and the wife dyeth, and the husband taketh an other, and hath issue an other daughter, and discontinueth the taile, and after he disseiseth the discontinuee, and so dyeth seised, now the Land descendeth to the two daughters: In this case as to the elder daughter that is inheritable, this is a Remitter but of the halfe, & as to the other halfe, shee is put to her action of Formedon against her sister, for in this case the two sisters bee not tenants in parcenary, but be tenants in common, for this that they bee in by diuers titles, for the one sister is in her Remitter by force of the taile as to that that vnto her belongeth: And the other sister is in, as to that that belongeth to her, in Fee simple by the

diſcent of her father. In ỹ ſame maner it is if the tenant in the taile, infeoffe his heire apparant in the tayle, the heire being within age, & another Jointenant in fee, & the tenant in the tayle dyeth, now the heire in the taile is in the Remitter, as to the halfe, and as to the other halfe he is put to his writ of Formedon &c.

Alſo, if a tenant in the taile infeoffe his heire apparãt, the heire being at full age at the time of the feoffement, & after the tenant in the taile dieth, this is no Remitter to the heire, for this that it was his owne folly, that he being of full age would take ſuch feoffement &c. But ſuch folly may not be adiudged in the heire being within age at the time of the feoffement &c.

Alſo, if a tenant in the taile infeoffe a woman in fee, and dieth, & his heire within age taketh the woman to wife, this is a Remitter to the child, and the wife then hath nothing, for this that the huſband & the wife be but one perſon in the law: And in that caſe the huſband may not ſue a writ of Formedon, vnleſſe he will ſue againſt himſelfe, the which ſhall be inconuenient, and for that the Law iudgeth the heire in his Remitter, for this, that no folly may be arretted to him being within age at ỹ time of the eſpouſals &c. And if the heire be in his Remitter by force of the taile, it followeth by reaſon that the wife hath nothing &c. for inſomuch that the huſband & the wife be but one perſon, the land may not be ſeuered by halues, and for ſuch cauſe the Huſband is in his Remitter of

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the whole. But otherwise it is, if such an heire be of full age at the time of the spousals, then the heire hath nothing but in the right of his wife.

Also, if a woman seised of certaine land in fee taketh an husband, the which alieneth the same Land to another in fee, and the Alienee letteth the same Land to the husband and the wyfe for terme of their two lives, saving the reuersion to the lessor and to the heire, in this case the wife is in her Remitter, and she is seysed in deed in her demeine as in Fee, as she was before, for this, that the taking of estate shalbe abridged in the law the deed of the husband, and not the deed of the wyfe, so that no folly may be iudged in the wyfe that is couert in such case: And in this case the lessour hath nothing in the reuersion, for this that the wife is seised in Fee. But in this case, if the lessour will sue an action of waste against the husband and his wyfe, for this that the husband hath made waste, the husband may not barre the Lessour for to shew this, that the taking of estate made vnto him and to his wife, made a Remitter to his wyfe, for this that the husband is stopped to say this against his feoffement and owne reprisell of estate for terme of lyfe to him and his wyfe, and yet the Lessour hath no reuersion, for this that the fee simple is in the wife. So a man may see a matter in this case, that a man shall be stopped by a matter in deed, though no writting by deede indented,

or otherwise bee thereof made. But if in an Action of waste the husband make default at the graund distresse, and the wife prayeth to be received, and is received, she shall well shew all the matter, and how shee is in her Remitter, and shall barre the lessor of his action: For in every case that the wife is received for default of her husband, shee shall plead, and have the same advantage in pleading, as shee were a woman sole. And howbeit that the Alienee made no lease to the husband and his wife by deede indented, yet this is a Remitter to the wife, and though the Alienee yelded the same Land to the husband and his wife by fine for terme of their lives, yet this is a Remitter to the wife, for this that the wife covert that taketh estate by fine shall not be examined by the Justices. And here note well, that when any thing shall passe from the wife that is covert of husband by force of a fine, as ꝑ husband and wife make conusance of right to another, &c. or make a grant to yeild to another, or release by a fine to another, & sic de similibus, where the right of the wife passeth from ꝑ wife by force of the same, the wife in all such cases shall bee examined before that the fine be accepted. And such fines cõclude such wives covert for ever. But where nothing is moued in the fine, but all only ꝑ the husband and the wife take estate by force of the same fine, this shal not conclude the wife, for this that in such case she shall never be examined.

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Also, if tenant in the taile discontinue in the taile, & hath a daughter & dieth, & the daughter being of full age taketh an husband, & the discontinuee maketh a lease of this to ꝑ husband and his wife for terme of their lives, this is a Remitter in deed to the wife, and the wife is in by force of the taile, Causa qua supra.

Also, if land be given to the husband and his wife, to haue and to holde to them and to the heirs of their two bodies begotten, & after the husband alieneth the land in Fee, and taketh againe an estate to him & to his wife for terme of their two lives. In this case this is a Remitter in deed to the husband & the wife, manger the husband, for it may not be a Remitter to the wife, except it be a Remitter to the husband, for this that the husband & his wife bee but one person in the law, though that the husband is stopped to claime this to be a Remitter in him against his alienation, and his own repriſell, as is aforesaid.

Also, if land be given to a woman in the taile, the remainder to another in the tayle, the remainder to the third in ꝑ tayle, the remainder to the fourth in Fee, & the wife taketh an husband, & the husband discontinueth the land of his wife, by this discontinuance all the remainders be discontinued, for if ꝑ wife die without issue, they in ꝑ remainder shal haue no remedy, but to sue their writs of Formedon in the remainder whē they come to their time &c. But if after such discontinuance, estate be made to

the Husband and his wyfe for terme of their two liues, or for terme of an other life, or an other estate &c. for this, that this is a Remitter to the wife, this is a Remitter to all those in the remainder &c. For after this that the wyfe, that is in her Remitter, dyeth without issue, they in the Remainder may enter &c. without an action or suit &c. In the same manner it is of them which haue the reuersion after such taile &c.

Also, if a man let a House to a woman for terme of her life, sauing the reuersion to the lessor, and after one sueth a faint a false action against the woman, and recouereth the house against her by default, so that the woman may haue against him a writ of Quod ei deforceat, after the Statute of Westminster the second chapter 4. now is the reuersion of the lessour discontinued, so that he may not haue an action of Waste. But in this case, if the woman take an Husband, and he that recouereth letteth the house to the husband and his wyfe for terme of their two liues, the wife is in her Remitter by force of the first Lease. And if the Husband and the wyfe make Waste, the first lessor shal haue against him a writ of Waste, for this, that insomuch that the wife is in her Remitter, her is remitted to his reuersion. But it fareth in this case, if he that here commeth by the false Action, will bring an other writ of Waste against the Husband and his wyfe, the Husband hath no remedie against him,

him, but to make default at the great distresse &c. and to cause the wife to be received and to plead the matter against the second lessor, and to shew that the action by which he recouered was false and layned in the Lawe, and so the wife may barre &c.

Also, if the husband discontinue the land of his wife, and after taketh estate to him and to his wyfe, and a third man for terme of their liues, or in fee, this is a Remitter to the woman but as to the moity. And as for the other moitie it behoueth her after the death of her husband to sue a Cui in vita.

Also, if the husband discontinue the land of his wife, and go ouer the Sea, and the discontinuee let the same land to the womã for term of lyfe, and deliuer to her seysin, and after the husband commeth and agreeth to that liuerie of seisin, this is a remitter to the woman, and yet if the woman had beene sole at the time of her Lease made to her, this should be to her no Remitter, but insomuch as she was couert baron at the time of the Lease, and the liuerie of seisin made to her, though that she only take the Liuery of seisin, this was a Remitter to her, because a woman couert shal be adiudged as an Infant within age in such case &c. Inquire in this case if the husband when he commeth againe will disagree to the leas and liuerie of seisin made to his wife in his absence, if this shall put the woman from her Remitter.

Also, if the Husband discontinue the tenements

ments of his wife, and the discontinuee is disseised, and after the disseisor letteth the said tenements to the Husband & his wife for terme of life, this is a Remitter to the wife: but if the husband and the wife were of couin or consent that the disseisin should be made, then it is no remitter to the wife, because shee is a disseiseresse. But if the husband were of couin & consent to the disseisin, and not the wife, then such lease made to the wife is a Remitter, because that no default was in the wife.

Also, if such a discontinuee had made estate of Freehold to the husband & the wife, by Indenture vpon condition, & reseruing to the discontinuee a certaine rent, & for default of payment a reentry, & because that the rent is behind, the discontinuee entreth, of this rent the womã shall haue Assise of Nouel disseisin, after the death of her husband against ỹ discontinuee because ỹ the condition was wholly annulled, insomuch as the woman was in her remitter, yet the husband with his wife could not haue assise, because the husband is stopped.

Also, if the husband discontinue the Tenements of his wife, and taketh estate againe for terme of his life, the remainder after his decease to his wife for terme of her life, in this case this is no Remitter to the wife during the life of her Husband, because that during the life of the Husband, the wife hath nothing in the Freehold, but if in this case the wife ouerliue the husband, this is a Remitter

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to the wife, because that a Freehold in law is fallen vpon her mauger her will, & insomuch that she can haue no action against none other person, and against her selfe shee can haue no action, therefore shee is in her Remitter, for in this case though ỳ the woman enter not into the tenements, yet a stranger that hath cause to haue action, may sue his action against the woman of the same tenements, because shee is Tenant in law, though she be not Tenant in deed, for Tenant of Franktenemẽt in deed is he, ỳ if he be disseised of Franktenement, may haue Assise, but the Tenant in the law before his entry shall haue no Assise: & if a man seised in fee of certaine land hath issue a son which taketh a wife, and the Father dieth seised, and after the sonne dieth before any entry made by him into the land, the wife of the sonne shall be endowed in the land, & yet he had no frãktenement in deed, but he had a fee & a franktenemẽt in law And note well, that a Præcipe qđ reddat may be as well maintained against him that hath the Franktenement in Law, as against him that hath Franktenement in deed.

Also, if a Tenãt in the tayle haue issue two sonnes of full age, and hee letteth the tayled land to the elder sonne for terme of his life, the remainder to the younger sonne for terme of his life, and after the tenant in the taile dyeth: In this case the elder son is not in his remitter, because he tooke estate of his father, but if the elder sonne die without issue of his body, then

then this is a remitter of the ponger brother, because he is heire in the taile, and a frankte-nement in law is fallen vpon him by force of the remainder, & there is none against whom he may sue his action &c. In the same manner it is where a man is disseised, and the disseisour dieth thereof seised, and the tenements discend to his heire, and the heire of the disseisor maketh a leas to a man of the said tenements for terme of life, the remainder to the disseisee for terme of life, or in taile, or in fee, and the tenant for terme of life dieth, now this is a Remitter to the disseisee &c. Causa qua supra.

Also, if a tenant in the taile infeoffe his son and an other of the tayled Land in fee, and liuerie of seisin is made to the other according to the deed, the Sonne not knowing thereof, nor agreeing to the Feoffement, and after hee that toke the Liuerie of seysin dyeth, and the sonne occupieth not the Land, nor taketh any profit of the Land during the lyfe of his Father, and after the Father dieth, now this is a Remitter to the sonne, because the freehold is fallen vpon him by the suruiuor, and no default was in him, because he neuer agreed &c. in the life of his Father, and there is none against whō he may pursue his writ of Formedon &c. For if a man be disseised of certaine Land, and the disseisor maketh a deed of feffement, whereof he infeoffeth B. C. and D. and the liuerie of seisin is made to B. and C. but D. was not at the Liuerie of seisin, nor neuer

agreed

agreed to the feoffement, nor neuer would take the profits &c. And after B. and C. die, and D. ouerlaieth them, and the disseisee bringeth his writ sur disseisin in the Per, against the same D. he shall shew all the matter, & how that he neuer agreed to the feoffement, and so he shall discharge himselfe of damages, so that the demandant shal recouer no damage against him, though ỹ he be tenant of the frankstenement of the land: And yet the statute of Glocester will, that the disseisee shal recouer damage in a writ of Entre, grounded vpon the Nouel disseisin, against him that is found tenant. And this is a proofe in the other case, that inasmuch as the issue in the tail commeth to the frankstenement not by his deed, nor by his agreement, but after the death of his father, this is a Remitter to him, inasmuch that he can sue an action of Formedon against none other person.

Also, if an Abbot alien the land of his house to another in fee, and the Alienee by his deed chargeth the land with a rent charge in fee, & after the alienee infeoffeth the Abbot with licence, to haue and to hold to the Abbot and his successours for euer, and after the Abbot dieth, and another is chosen and made Abbot: In this case the Abbot that is successor & his Couent be in their Remitter, and shal hold the land discharged, because that the same Abbot cannot haue an Action by his writ of Entre fine assensu Capituli of the same lands against none other person. In the same manner it is

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where a Bishop or Dean, or other such person alien &c. without assent &c. And after the Bishop taketh estate againe of the same land by licence to him, and to his successors, and after the Bishop dyeth, his successor is in his Remitter as in the right of his Church, and shall defeat the charge &c. Causa qua supra.

Also, if a man sue a false Action against tenant in the tayle, as if a man will sue against him a writ of Entre in the Post, supposing by his writ that the Tenant in the tayle had not his entry but by A. of B. that disseised the Graundfather of the demaundant, and that is false, and he recouereth against the Tenant in the tayle by default, and sueth execution, and after ỹ tenant in the tayle dyeth, his issue may haue a writ of Formedon against him that recouered: And if hee will plead the recouery against the Tenant in the taile, the issue may say, that the sayd A. of B. disseised not the Graundfather of him that recouered in such maner, as his writ supposeth, and so hee shall falsifie his recouerie. Also, suppose that that was true, that the said A. of B. disseised the graundfather of the demaundant that recouered, and that after the disseisin the demandant or his Father, or his Graundfather, by a deed had released to the Tenant in the tayle, all the right that he had in the land &c. And this notwithstanding hee sueth his writ of Entre in the Post against the tenant in the tayle, in the manner as is aforesaid, and the tenant in the

tayle

taple pleadeth to him, that the ſaid A. of B. diſſeiſed not his Graundfather, as his writ ſuppoſeth: and vpon this they be at iſſue, and the iſſue is found for the demaundant, wherby hee hath iudgement to recouer and ſueth execution, and after the Tenant in the taile dieth, his iſſue may haue a Writ of Formedon againſt him that recouered. And if hee will plead the recouery by action tried againſt his Father tenant in the taile, then hee may ſhew and plead the releaſe made to his Father, and ſo the action that was ſued was faint in the Lawe &c.

And it ſeemeth that faint action is as much to ſay in Engliſh, as fained action, that is to ſay, ſuch action, that though the wordes of his writ bee true, yet for certaine cauſes hee hath no cauſe nor title in the lawe to recouer by the ſame Action. And falſe Action is where the wordes of the writ bee falſe: And in the two caſes before ſayd, if the caſe were ſuch that after ſuch a recouerie and execution thereof made, the tenant in the taile had diſſeiſed him that recouered, and thereof died ſeiſed, whereby the land alſo deſcended vnto his iſſue, this is a Remitter to the iſſue, and the iſſue is in by force of the taple: And for that cauſe I haue put theſe two Caſes aforeſayd, to informe thee (my Sonne,) that the iſſue in the taple, by force of a diſcent made to him after a recouery and execution thereof made againſt his anceſter, may be as well in his Remitter,

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as hee should by descent made to him after a discontinuance made by the auncestor of the tayled land by feoffement in the countrey, or otherwise.

Also, in the same case aforesaid, if the case were such that after the demãdant hath iudgment to recouer against the tenant in tail, and the same tenant in the taile died before any execution had against him, whereby the Tenements descend to his issue, and he that recouered sued a Scire facias to haue execution of the iudgement against the issue in the tayle, the issue shal plead the matter, as before is said, and so shall procue that the recouerie was false or faint in the law, and so shall barre him to haue execution of the iudgement &c.

Also, if the tenant in the tail discontinue the tayle and dye, and his issue bringeth a writ of Formedon against the discontinuee beeing tenant of the freehold of the land, & the discontinuee pleadeth that he is not tenant, but otherwise disclaimeth from the tenancy in the land: In this case the iudgment shalbe, that the tenant go without day, & after such iudgement, the issue in the tayle ỹ is demandant may well enter in the land, notwithstanding the discõtinuance. And by such entry hee shalbe adiudged in his Remitter, & the cause is, because that if any man sue a Præcipe quod reddat against any tenant of freehold, in which action the demandant shall not recouer damages, & the tenant pleadeth Nontenure, or otherwise disclay-

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meth in the tenancy, the demaundant may not auer in the writ, that hee is tenant as the writ suppoſeth. And for that cauſe the demaundant after that the iudgement is giuen, that the tenaunt ſhall goe without day, may enter into the tenements demaunded, the which ſhall be as great aduantage to him in the law, as if he had iudgement to recouer againſt the tenant. And by ſuch entrie hee is in the Remitter by force of the taile: but where the demandant recouereth dammages againſt the tenant, there the demandant may auerre that hee is tenant as the writ ſuppoſeth, and that for the aduantage of the demandant for to recouer his dammages, or elſe he ſhall not recouer his dammages, the which damages be or were giuen him by the Law.

Alſo, if a man bee diſſeiſed, and the diſſeiſor dye, his heire being in by diſcent, now the entrie of the diſſeiſee is taken away. And if the diſſeiſee bring his writ of Entre vpon the diſſeiſin in the Per againſt the heire, & the heyre diſclaimeth in the tenancy &c. the demaundant may auerre his writ, that hee is tenant as the writ ſuppoſeth, if he will, for to recouer his damages. But yet if he will leaue the auerment &c. he may lawfully enter into the land, becauſe of the diſclaimer, notwithſtãding that his entry before was taken away. And that was adiudged before my maſter Sir Robert Danby, late chiefe Iuſtice of the Common place, and his companions, 5. E. 4. fol. 1. & 45.

Also, where the entry of a man is lawfull, though that he take estate to him when hee is of full age for terme of life, or in taile, or in fee, this is a Remitter to him, if such taking of estate bee not by deed indented, or by matter of record that shall conclude or stop him: For if a man bee disseised, and thereof taketh estate of the disseisor without deed, or by deed Poll, that is a good Remitter of the disseisee.

Also, if a man let land for terme of life to an other, which alieneth to another in fee, & the alienor maketh estate to ỹ lessor, this is a remittor to the lessor, because his entry was lawful.

Also, if a man be disseised, and the disseisor letteth the land to the disseisee by deed Poll, or without deed for terme of yeres, whereby the disseisee entreth, this entry is a Remitter to the disseisee: for in such case where the entrie of a man is lawfull, & a lease is made to him, though that he claime by words in the Countrey, that he hath estate by force of such Lease, or saieth openly that hee claimeth nothing in the land, but by force of such lease, yet this is a Remitter to him, for such claime in the countrey is nothing to purpose: but if he claime in a Court of Record, that hee hath estate but by force of such lease and not otherwise, then he is concluded &c.

Also, if two Jointenants seised of certaine land in fee, the one being of full age, the other within age be disseised, & the disseisor dieth seised, and his issue entreth, the one of the iopntenants

nants being then within age, & after that hee commeth to full age, the heir of the disseisor letteth the land to the same tointenants for term of their liues, this is a remitter as to the halfe to him that was within age, because that hee is seised of the moity that belongeth to him in Fée, because his entry was lawfull. But the other tointenant hath in the other halfe but estate for terme of life by force of the lease, because his entry was taken away &c.

Warrantie.

IT is commonly said, that there be three maner of Warranties, that is to say: warranty lineall, warranty collaterall, and warrantie that beginneth by disseisin. And it is to wit, that before the statute of Glouceſter, all warranties which descended to them which were heires to them that made the warranty, were bars to the same heires to demand any lands or tenemãts against those warranties, except the warrãties that began by disseisin, for such warranty was neuer barre to the heire, because the warranty began by wrong, that is to say, by disseisin.

Warranty that beginneth by disseisin is in such forme: As where there is father & sonne, and the son doth purchase land, &c. and letteth the same land to his father for terme of yeres, and the father by his deed therof infeoffeth an other in fée, and bindeth him and his heires to

warranty, & if the father die wherby the warranty discendeth to his sonne, this warrantie shall not barre the sonne, for notwithstanding this warranty, the sonne may well enter into the land, or haue an assise against the aliene if he will, because the warranty began by disseisin: For whē the father that had no estate but for terme of yeres made a feffement in fee, this was a disseisin to the son of the frankētenemēt that then was in the son. In the same manner it is, if the sonne let vnto the father the land to hold at will, & after ℈ father maketh a feffemēt with warrāty &c. And as it is said of ℈ father, so it may be said of euery other ancestor &c.

In the same maner it is if tenant by Elegit, tenant by statute merchant, or tenant by statute staple, maketh a Feoffement in Fee with warranty &c. this shall not bar the heire that ought to haue the land, because that such warranties begin by disseisin.

Also, if a warden in chiualry, or warden in socage, make a feffemēt in fee, in fee taile, or for term of life with warrāty &c. such warrāties be no bars to the heires to whom the land shal descend, because that they begin by disseisin.

Also, if the father & the sonne purchase certaine lands or tenements, to haue & to holde to them ioyntly, &c. and after the father aieneth the whole to another, and bindeth him and his heires to warranty &c, and after the father dieth, this warranty shall not barre the sonne of the moity that belongeth vnto him of the same

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tenement, because þ as to the moity that belonged to the son, the warranty begin þ by disseisin.

Also, if A. of S. be seised of a mease, and F. of G. that hath no right to enter into the same mease, claiming to hold the same mease to him and to his heires, enter into þ same mease, but A. of B. then is continually dwelling in the same mease, in this case the possession of the franketenement shalbe alwap adiudged in A. of B. & not in F. of G. because that in such case where two be in one mease, or in other tenements, & the one claimeth by one title, and the other by another title, þ law shall adiudge him in possession that hath right to haue the possession of the same tenement. But in the case afozesaid, if F. of G. make a Feoffement to certain barretozs & extoztioners in the countrey foz to haue maintenance of them of the same mease, by a deed of feoffement with warranty, by foꝛce of which the said A. of B. dare not dwel in the same mese, but goeth out of þ same mese, this warranty beginneth by disseisin, because þ such a feffemẽt was cause that the said A. of B. left the possession of the same mese.

Also, if a man that hath no right to enter in an others tenements, enter into the said tenements, and incontinently maketh a Feoffement to other persons by his deed with warranty, and deliuereth to them seisin, this warranty beginneth by disseisin, because that the disseisin and the Feoffement were made as it were at one time. And that this is Law, see

may see it in a plee Anno 31. Edwardi tertij in a writ of Formedon in the Reuersion, Garr Fitzh. 28.

Warranty lineall, is where a man seised of certaine lands in fee, maketh a feoffement by his deed to another, and bindeth him and his heires to warranty, & hath issue and dieth, and the warrãty discendeth to his issue, this is a lineall warranty: And the cause why this is a lineall warranty, is not because that the warranty discendeth from the father to his heire, but the cause is, because that if no such deed with warranty had beene made by the father, then the right of the tenements should discend to the heire, and the heire should conuey the discent from the father &c. For if there be Father and sonne, and the sonne purchase Tenements in fee, and the father disseiseth the sonne therof, and alieneth it to another in fee by his deed, and by the same deed bindeth him & his heires to warrant the same tenements and so dieth, and the father dieth, now is the son barred to haue the said tenements, for hee may by no suit, nor by any other meanes haue the said tenements, because of the said warranty: And that is a collaterall warranty, & yet the warranty discendeth lineally frõ the father to the son. But because if no such deed with warrãty had bin made, the son in no maner might conuey the title that he hath of the tenements frõ his father to him insomuch that his father had no estate nor right in the tenements, therfore

fore such warranty is called collaterall warranty: Insomuch ẏ he that made the warrantie is collaterall to the title of the tenements, and ẏ is as much to say, that hee to whom the warranty discended, could not conuey the title that he had in the tenements by him that made the warranty in this case, if no such warranty had been made.

Also, if there be Graundfather, Father, and sonne, & the graundfather is disseised, in whose possession the father releaseth by his deed with warranty &c. and dyeth, and after the graundfather dieth, now is the sonne barred of the tenements by the warranty of his father, & this is called lineall warranty, because that if no such warranty had bin made, the sonne might not haue conueyed the right of the tenements to him, nor shew how he is heire to the grandfather, but by meanes of the father &c.

Also, if a man haue issue three sonnes and is disseised, and the elder sonne releaseth to the disseisor by his deed with warrantie, &c. and dieth without issue, and after this the Father dieth, this is a lineall warranty to the yonger sonne, because that though the elder son died in the life of the Father, yet by possibilitie it might bee, that hee might conuey to him the title of the land by his elder brother, if no such warranty had bin made: For it might be that after the death of the father, the elder brother entred into the tenements and dyed without issue, and then the younger sonne shall conuey

to him the title of his elder brother. But in this case if the ponger son release with a warranty to the disseisor, & dieth without issue, this is a collateral warranty to the eldest sonne, because that of such land as was to ꝑ other, the elder brother by no possibility might convey to him the title by meane of the ponger brother.

Also, if the tenant in the taile hath issue three sonnes, and discontinue the taile in fee, and the middle sonne releaseth by his deed to the discontinuee, and binde him & his heires to warrantize &c. and after the tenant in the taile die, and the middle dieth without issue, now is the elder sonne barred to have any recouery by a writ of Formedon, because that the warranty of the middle brother is collateral to him, insomuch that he may by no maner convey to him by force of the taile, any descent by the middle brother, and therefore it is a collateral warranty. But if in this case the elder brother die without issue, now the younger brother may wel haue a Formedon in the discender, & recouer the same land, because that the warranty of the middle brother is lineall to the younger brother, because it may bee, that by possibilitie the middle brother may be seised by force of the taile after the death of his elder brother, and then the yongest brother may convey his title of discent by the middle brother &c.

Also, if the tenant in the tail discontinue the taile, & hath issue and die, and the vncle of the issue releas to the discontinuee with warranty

and

and die without iſſue, this is a collateral warranty to the iſſue in the taple, becauſe that the warrantie deſcendeth vpon the iſſue, which cannot conuey himſelfe to the taple, by meane of his vncle.

Alſo, if the tenant in the taile hath iſſue two daughters and die, and the elder daughter entreth into the whole, & thereof make a Feoffement in fee with warranty, and after the elder daughter dieth without iſſue: In this caſe the younger daughter is barred, as to the moytie, and as to the other halfe ſhe is not barred, for as to the moytie that belongeth to the ponger daughter, ſhe is barred, becauſe that as to the moitie that belõgeth to her, ſhe cannot conuey the diſcent by the means of her elder ſiſter: and therefore as to the moitie, this is collaterall warranty, but as to the other moitie which belongeth to her elder ſiſter, by the ſame elder ſiſter the warrãty is no bar to the ponger ſiſter, becauſe that ſhe may conuey her diſcent as to that moity that belongeth to her elder, by the ſame elder ſiſter: And ſo as to that moity that belongeth to the elder ſiſter, the warranty as to that is lineall to the ponger ſiſter.

And note well, that as to him that demaundeth fee ſimple by any of his auncelors, hee ſhall be barred by lineall warranty which diſcendeth vpon him, except he bee reſtrained by ſome ſtatute, but he which demandeth fee taile by a writ of Formedon in the diſcender, ſhall not be barred by lineall warrantie, except hee

haue

haue enough by descent in Fee simple by the same auncester that made the warranty, but a collateral warranty is a barre to him that demaundeth fee, and also to him that demaundeth fee taile, without any other descent of fee simple, except in cases that bee restrained by the statute, and other cases for certaine causes as shalbe said hereafter.

Also, if land bee giuen to a man and to his heires of his body begotten, the which taketh a wife, and hath issue a sonne betweene them, and the husband discontinueth the taile in fee, and dieth, and after the wife releaseth to the discontinuee in fee with warrantie, and dyeth, and the warranty discendeth to the sonne, this is a collaterall warrantie. But if tenements bee giuen to the husband and the wife, and to the heires of their two bodies begotten, which haue issue a sonne, & the husband discontinueth the taple, and dieth, & after the wife releaseth with warranty & dieth, this warrantie is but a lineall warranty to the son, for the sonne shal not bee barred in this case to sue his writ of Formdon, except he haue enough by discent in Fee simple by his mother, because þ their issue in a writ of Formedon ought to conney to him the right as heire to his father and to his mother of their two bodies begotten, by forme of the gift. And so in such case the warrantie of the father, and the warranty of the mother, be but as lineall warranties to the heire &c. And note wel, & in euery case where a man demandeth

deth tenements in fée taile by a writ of Formedon, if any of the issues in the taile ỹ had possession, or that hath possession, make a warranty &c. if he ỹ sueth the writ of Formedon might by any possibilitie by matter that might bee in deed, conuey to him, by him that made the warranty by the forme of the gift: This is a lineal warranty, and not collaterall.

Also, if a man haue issue three sonnes, and he giueth land to the eldest sonne, to haue and to holde to him and to the heyres of his bodie begotten, and for default of such issue, the remainder to the middle sonne, to him, and to the heires of his body begotten, and for default of such issue the remainder to the youngest sonne, and to his heires of his body begotten, in this case if the eldest sonne discontinue the taile in fée, and bind him, and his heires to warrantie, and die without issue, this is a collaterall warranty to the middle sonne, and he shall bee barred to demaund the same land by force of the remainder, because that the remainder is his title, and his eldest brother is collaterall to the title which beginneth by force of the remainder.

In the same maner it is if the middle sonne had the same land by force of the remainder, because that his eldest brother made no discontinuance, but dyeth without issue of his body, and after the middle sonne maketh a discontinuance with warranty &c. ỹ dieth without issue, this is a collaterall warranty to the

youngest

youngeſt ſonne, and alſo in this caſe if any of the ſaid ſonnes be diſſeiſed, and the father that made the gift releaſe to the diſſeiſor all his right &c with warrantie, this is a collaterall warrantie to the ſonne vpon whom the warranty diſcended, Cauſa qua ſupra. And ſo note well that where a man that is collaterall to the title &c. releaſeth with warranty, this is a collaterall warrantie.

Alſo, if the Father giue Land to his elder ſonne, to haue and to holde to him and to his heirs males of his body begotten, the remainder to the ſecond ſonne &c. if the eldeſt brother alien in fee with warrantie &c. and hath iſſue female & dieth without iſſue male, this is not a collaterall warrantie to the ſecond ſonne, nor ſhall not hurt him of his action by Formedon in the remainder, becauſe that the warrantie deſcendeth to the daughter of the eldeſt ſonne, and not to the ſecond ſonne. For euery warranty that diſcendeth, diſcendeth to him that is heire vnto him which made the warrantie by the common law &c.

Alſo, if Land be giuen to a man and to his heires males of his body begotten, and for default of ſuch iſſue the remainder therof to his heires females of his body begotten, and after the donee in the taile maketh a feoffement in fee with warranty according, and hath iſſue a ſonne and a daughter and dyeth, this warrantie is but a vncall warrantie to the ſonne, to demaund by writ of Formedon in the diſcender,

cender. And it is but lincall to the daughter to demaund the same land by writ of Formedon in the remainder, if her brother die without heire male, because that shee claimeth as heire female of the body of her father begotten. But in this case, if her brother in this life release to the discontinuee with warrantie &c. and after die without issue, this is a collaterall warrantie to the daughter, because that shee cannot convey to her the right that she had by force of the remainder by any meane of discent by her brother, and therefore the brother is collateral to the title of his sister, and therefore his warranty is collaterall &c.

Also, I have heard say, that in the time of king Richard the second, there was a Justice in the common place dwelling in Kent, called Rickhill, that had issue diuers sonnes: and his intent was, that his eldest sonne should have certaine lands to him and to his heires of his bodie begotten, and for default of issue, the remainder to his second sonne, and so forth, and so to the third sonne &c. And because that he would that none of his sonnes should alien or make warrantie for to barre or to hurt the other that should be in the remainder &c. Hee caused to be made an Indenture to such effect, that is to say, that the Lands and tenements were given to his eldest Sonne upon this condition, that if the eldest sonne alienes in fee, or in fee taile &c. or any of his sons alienes &c. that then their estate should cease & should bee void,

doyd, and that then the said Lands or Tenements immediately should remaine to the second son, and to the heyres of his body begotten, and that vpon the same condition, that is to say, if the second sonne alien &c. that then his estate should cease, and that then the same lands & tenements should remaine to the third sonne, and to the heires of his body begotten, &c. the remainder to other of his sonnes, and liuery of seisin was made according. But it seemeth by reason that all such remainders in the forme before said be void, and of no value, and that for three causes. One cause is, because euery Remainder that beginneth by a deed, it behoueth that the remainder be in him to whom the remainder is tayled by force of the same deed when the liuery of seisin is made to him that hath the Franktenement. And such Remainder was not to the second sonne at the time of Liuerie of Seisin in case before said, &c.

The second cause is, if the first Sonne alien the tenements in fee, then is the Franktenement and the Fee simple in the alienee and in none other, and if the donour had any reuersion, by such alienation the reuersion is discontinued, then how by any reason may it bee that such Remainder shall begin his being and his growing immediately after such alienation made to a stranger, that hath by the same alienation Franktenement, and Fee simple, and also if such remainder should

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be good, then might he enter vpon the alienee, where hee had no maner of right before ẏ alienatiõ, which should be inconuenient. The third cause is, when the condition is such, that if the eldest son alien &c. that his estate shall cease, or shall bee void &c. then after such alienation, &c. may the donor enter by force of such condition, &c. as it seemeth, & so the donor or his heires in such case ought more sooner to haue the land, then the second sonne that hath no right before such alienation &c. and so it seemeth that such remainders in the case aforesaid be void.

Also, at the common law before the Statute of Gloucester, if the tenant by curtesie had alienied in Fee with warranty according, after his decease this was a bar to the heire, &c. as it appeareth by the words of the same Statute: But it is remedied by the same Statute, that the warrantie of the tenaunt by the curtesie shall bee no barre to the heire, except hee haue enough by descent by the tenaunt by the curtesie, for before the said estatute that was a collaterall warrantie to the heire, because hee could not conuey any Title of discent to the tenements by the Tenant by the curtesie, but only by his mother or other of his auncestors, &c. and that is the cause why it was collateral warrantie. But if a man Inheritor, take a wife, which haue issue a sonne betweene them and the father dyeth, & the sonne entreth into the land, and endoweth his mother, and after his mother alieneth that that shee hath in hee

dower

dower to another in fee, with warranty accor-
ding, and after dyeth, and the warrantie de-
scendeth to his sonne, now the sonne shall bee
barred to demaund the same land, because of
the said warrantie, because that such collate-
rall warranty of tenant in dower is not reme-
died by any statute. The same Law is where
tenant for terme of life maketh an alienation
with warranty &c. and dieth, and the warran-
tie discendeth to him that had the reuersion, or
the remainder &c. they shall be barred by such
warrantie &c.

Also, in the said case, if it so were that when
the Tenaunt in Dower alieneth &c. the heire
was within age, and also at that time that the
warranty descendeth vnto him, he was with-
in age, in this case the heire may after enter
vpon the Alience, notwithstanding the war-
ranty discēdeth &c. because that no laches shall
bee adiudged in the heire within age, that hee
entred not vpon the Alience in the life of the
tenant in Dower, but if the heire was with-
in age at the time of the Alienation, and after
hee came to full age in the life of the tenant in
Dower, and so being of full age he entred not
in the life of the tenaunt in Dower, and after
the tenant in dower dieth, there peraduenture
the heire shall be barred by such warranty, be-
cause it shall be accounted his folly that he be-
ing of full age, entred not in the life of the te-
nant in Dower &c.

Also, it is spoken in the end of the said

Esta-

Estatute of Glouceſter, that ſpeaketh of the alienation with warrenty made by the tenant by the curteſie in ſuch forme.

Alſo, in the ſame maner the heire of the woman after the death of his father and mother ſhall not be barred of action, if he demaund the heritage or the marriage of his mother by a writ of Entrie that his father alened in the time of his mother, whereof no fine is leuied in the kings court &c. And ſo by force of the ſame ſtatute, if the husband of the wife alien the heritage or mariage of his wife in fe with warranty &c. by his deed in the Countrey, this is cleare law, that this warranty ſhall not barre the heire, except he haue enough by diſcent &c. But the doubt is, if that the husband alien the heritage of his wife by fine leuied in the kings courts with warrantie &c. if this ſhall barre the heire without any diſcent in value &c. And as to that I will ſay heere certaine reaſons that I haue heard ſay in this matter. I heard my Maiſter Sir Rich. Newton late chiefe Juſtice of the common place ſay once in the ſame place, that ſuch warranty that the baron maketh by fine leuied in the Kings Court, ſhall bar the heire, though that hee haue nothing by diſcent, becauſe the ſtatute ſaith, whereof no fine is leuied in the Kings court &c. And ſo by his opinion, this warranty by fine &c. abideth yet a collaterall warrantie, as it was at the common law not remedied by the ſaid ſtatute, becauſe that the ſayd Eſtatute excepteth the

nlienation by fine with warranty. And some other haue said, & yet say the contrary, & this is their proofe, for as by the same chapter of the said estatute is obtained, that the warrantie of the Tenant by the curtesie shall not barre the heire, except he haue enough by discent &c. though that the Tenant by the curtesie leue a fine of the same landes with warranty &c. as strongly as he can, yet this warranty shall not bar the heire, except hee haue assets enough by discent &c. And I beleeue that this is law, and therefore they say, that it should be inconuenient to vnderstand the statute in such forme that a man that hath not but in the right of his wife, may by fine leuied by himselfe of the tenements that he hath but in the right of his wife with warrantie &c. barre the heire of the said tenements without discent of the fee simple &c. where the tenant by the curtesie cannot do it. But they haue said, that the statute shall be vnderstood after this forme, that is to say, where the statute speaketh, whereof no fine is leuied in the Kings Court, that is to say, whereof no lawfull fine is rightfully leuied in the same kings court, and that is whereof no fine of the husband and his wife is leuyed in the kings court, for at the time of the making of the said Statute, euery estate of Lands or tenements that any man or woman had that should descend to his heyre, was Fee simple without condition, or vpon condition in deed or in Law. And because that such fine then might

might lawfully haue beene leuied by the husband and his wife, and that if the heires of the husband warrant &c. such warranty shall bar the heire &c.

Also so they say, that this is the vnderstanding of the said statute, for if the husband and the wife made a Feoffement in Fee by deed in the Countrey, the heire after the decease of the husband & the wife shall haue a writ of Entre sur Cui in vita &c. notwithstanding the warrantie of the husband: Then if no such exception was made in the statute of the fine leuied &c. then the heire should haue the writ of Entre &c notwithstanding the fine leuied by the husband and the wife, because that the wordes of the statute before the exception of the fine leuied &c. bee generall &c. that is to say, that the heire of the woman after the death of the husband & the wife, shall not be barred of action, if he demand the heritage or the mariage of his mother by a writ of Entre, that his father alened in the time of his mother, & so it should be in that case of the Statute, except such wordes were, that is to say, wherof no fine is leuied in the Kings Court: and to they say, that this is to be vnderstood, wherof no fine by the husband & the wife is leuied in the Kings court, the which is lawfully leuied in such case: For if the Iustices haue knowledge of a man that hath nothing but in the right of his wife, will leuy a fine in his name onely, they will not, nor ought not to take such fine to bee leuied by the

husband only, without naming the wife, therfore inquire of this matter.

Also, it is to wit, that in such words where the heire demaundeth the heritage or mariage of his mother, this word (Or) is a disiunctiue, and is as much to say, if the heire demand the heritage of his mother, that is to bee understood, the tenements that his mother had in fee simple by dicent, or by purchase. or if the heire demand the mariage of his mother, that is to say, the tenements that were giuen vnto his mother in frankmariage.

Also, where it is mooued in diuers deedes these words in Latine, Ego & hæred mei &c. warrantizabimus, & imperpetuũ defendemus, it is to see what effect hath that word Defendemus in such deedes: & it seemeth that it hath not the effect of warrantize, nor comprehendeth any clause of warrãtize, for if it should be so that it taketh effect, or cause of warrantize, thẽ it should be put in some fines leuied in the Kings court. And a man neuer saw that this word Defendemus was in a fine, but only this word Warrantizabimus, by which it seemeth, that this verbe Warrantizo maketh warrantie, and is the cause of warrantize, and none other word in our law.

Also. if tenant in the taple bee seized of tenements deuisable by testament after the custome, &c. and the tenant in the taple alieneth the tenements to his brother in fee, and hath issue and dieth, and after his brother deuiseth

by

by his teſtamēt the ſame tenemēts to another in fee, and bindeth him & his heires to warrātize &c. and dieth without iſſue, it ſeemeth that this warranty ſhall not barre the iſſue in the taile, if he will ſue his writ of Formedon, becauſe that the warrantie deſcended not to the iſſue in the taile, inſomuch as the vncle of the iſſue was not bound by force of the ſame warranty in his life: And the cauſe that hee could not warrant the land in his life is, inſomuch that the deuiſe could not take any execution or effect but after his deceaſe, & inſomuch that the vncle in his life was not held to warrātie, ſuch warrantize may not diſcend from him to the iſſue in the taile &c. for nothing may diſcend from the auncеſtor to his heire, but the ſame that was in the auncеſtor. Alſo a warrantie may not goe after the nature of tenements by cuſtome, but only after the forme of the cōmon law. For if tenāt in taile be ſeiſed of tenemēts in borough Engliſh, where the cuſtom is, that all tenements of the ſame Borough, ought to diſcend to the yongeſt ſon, and he diſcontinueth the taile with warranty &c. and hath iſſue two ſons & dieth ſeiſed of other lands & tenements in the ſame Borough in fee ſimple to the value and more of the tenements tayled, &c. yet the yongeſt ſonne ſhall haue a Formedon of the tenements tayled, and ſhall not be barred by the warrantize of his father, though ynough to him deſcended in fee ſimple from the ſame father after the cuſtome, for this that the war-

rantize discendeth vpon the elder brother that is in full life &c. and not vpon the yongest son. In the same maner it is of collaterall warrãtize made of such tenements where the warrantize discendeth to the elder son &c. this shal not bar the yonger son &c. In the same maner it is of tenements in the Shire of Kent, which is called Gauelkind, the which tenements be departible among the brethren &c. after the custom &c. if any such warranty be made by their ancestors, such warranty discendeth all onely to the heire that is heire by the common law, and not to all the heires which are heirs of such tenements after the custome &c.

Also, if tenant in the taple haue issue two daughters by diuers venters, and dyeth, and the daughters enter, and a stranger disseiseth them of the same Tenements, and one of the daughters releaseth by her deed to the disseisor all her right, and bindeth her and her heires to warrantize, and dieth without issue, in this case the sister that survyueth may well enter & put out the disseisee of all the tenements, for this that such warrantize is no discontinuance, nor collaterall warrantize to the sister that survyueth, for this that they bee of halfe blood, and the one may not be heire to the other after the common Law. But otherwise it is where there bee daughters of tenants in the taple by one venter.

Also, if tenant in the taile let tenements to an other for terme of life, the remainder to an other

other in Fee, & the collaterall auncester confir-meth the estate of the tenant for terme of life, and bindeth him and his heires to warrantize for terme of life of the tenant for terme of life & dyeth, and the tenaunt in the taple hath issue & dyeth, now this issue is barred to aske the tenemẽts by writ of Formedon during the life of the tenant for terme of life, because of the collaterall discent vpon the issue in the taple. But after the decease of the tenant for terme of life, the issue shall haue a Formedon &c. And vpon this I haue heard a reason, that this case shall prooue an other case: that is to say, If a man let his land to another, to haue & to hold vnto him & to his heires for terme of an others life, and the lessour dyeth, liuing him to whose life &c. and a stranger entreth into the land, that the heire of the lessee may put him out, for this that in the case next aforesayd, in so much that a man may binde him and his heires to warrant to the tenaunt for terme of life, all onely during the life of the tenaunt for terme of life, and the warrantize discendeth to the heire of him that made the warrantize, the which warrantize is no warrantize of inheri-tance, but all onely for terme of an others life. By the same reason where tenements bee let to a man, to haue and to holde to him and to his heires for terme of anothers life, if the fa-ther die, liuing him to whose life &c. his heire shall haue the tenements liuing him to whose life &c. For they haue sayd, that if a man grant

an annuity to another, to haue & to take to him and to his heires for terme of anothers life, if the graunte die &c. that after his heire shall haue the annuitie during the life of him to whose life &c. Quere de ista materia &c.

But where such a lease or grant is made to a man and his heyres for terme of yeeres, in this case the heire of the lessee & the graunee shall neuer haue after the death of the lessee or the graunte that that is so letten or graunted, for this that it is a chattell reall, and all chattels reals by the common law, shal come to the executors of the graunte, or the lesse, and not to the heire, &c.

Also, in some cases it may bee, that howbeit that a collaterall warrantize be made in fee &c. yet such warrantize may be defeated and aniented. As the tenant in the taile discontinueth the tayle in fee, & the discontinuee is disseised, & the brother of the tenant in the taile releaseth by his deed to the disseisor all his right &c. with warrantize in fee, and dieth without issue, and the tenant in the tayle hath issue & dyeth, now the issue is barred of his action by force of the collaterall warrantie descending vpon him: but if after this the discontinuee enter vpō the disseisor, then may the heire in the taile haue his Action of Formedon &c. for this that the warrantie is aniented & defeated. For when the warrantize is made vnto a man vpon any estate that then he had, if the estate bee defeated, the warrantie is defeated.

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In the same maner it is if the discontinuee make a feoffement in fee, reseruing to him certain rent, & for default of paiment a reentry &c. and a collaterall ancestor releaseth to the feoffee that hath estate vpon condition &c. and dyeth without issue, though that the warrãty descended vpon the issue in the taple, yet if after the rent be behind, & the discontinuee entreth into the land &c. then the issue in the taile shal haue his recouery by a writ of Formedon, for this that the warranty collateral is defeated. And so if any such collaterall warranty be pleaded against the issue in the taple in his action of Formdon, he may shew the matter as is afore-said, how the warranty is defeated, and so hee may well maintaine his action.

Also, if a tenant in the taile make a feoffemẽt to his vncle, & after his vncle maketh a feoffemẽt in fee with warrantize &c. to another, and after the feoffee of the vncle enfeoffeth againe the vncle in fee, & after ꝑ vncle enfeoffeth a stranger in fee without warrantize, and dyeth without issue, & the tenaunt in the taple will bring his writ of Formedon against the stranger ꝑ was the last feoffee, & that by the vncle, in this case the issue shal neuer be barred by the warranty that was made by ꝑ vncle to the said first feoffee of his vncle, for this that the said warrantize was defeated & amented, for this that ꝑ vncle tooke againe to him as great estate of his said first feoffee, to whom the warrãtize was made, as the same feoffee had of him: And the cause why

why the warranty is antiented in this case, is this, that is to say, that if the warrantize were in his force, then the vncle shall warrant a fee simple vnto himselfe, that may not be, but if the feffor made estate to the vncle for terme of life, or in fee taple, saving the reuersion vnto him, &c. Or that hee made a gift in the taple to the vncle, or a lease for term of life, the remainder ouer &c. In this the warrantize is not all vterly antiented, but it is put in suspence during the estate that the vncle had, for after this that the vncle is dead without issue, then hee in the reuersion, or he in the remainder shall bar the issue in the taile of his writ of Formdon by the collaterall warrantize in such case, &c. But otherwise it is where the vncle had as great estate in the land by the feffor to whō the warrantize was made as the feffor had of him &c.

Also, if the vncle after such feffement made with warrantize, or a release made by him with warrantize bee attaint of felony, or outlawed of felony such collaterall warranty shal not bar nor grieue the issue in the taile, for this that by the attainder of felony, the blood is corrupt between them &c.

Also, if tenant in the taile be disseised, & after maketh a release to the disseisor with warrantize in fee, and after the tenant in the taple is attaint or outlawed of felony, and hath issue and dieth, in this case the issue in the taile may enter vpon the disseisor: And the cause is for this, that nothing maketh discontinuance in this

this case but the warranty, and the warranty may not descend to the issue in the tail, for this that the bloud is corrupt betweene him that made the warrantize and the issue in the taile, for the warrantize alwap abideth at the common law, & the common law is such, that whē a man is outlawed or attaint of felony, which outlawpp is an attainder in the Law, that the blood betweene him & his sonne, and all other which should be said his heires is corrupt, so that nothing by descent may descend to any that may be his heire by the cōmon law: And the wife of such a man that is so attaint shall never be indowed in the tenemēts of her husband so attaint &c. And the cause is because men should more eschew to doe felony &c. But the issue in the taile, as to the tenements tailed is not in such case barred, because he is inheritable by force of the statute, & not by the course of the common law And therfore such attainder of his father, or his ancestor in the taile &c, that not put him out of his right, that he should haue by force of the taple.

Also, if tenant in the taple infeoffe his uncle, which infeoffeth an other with warranty, &c. if after the feoffee by his deed release to the uncle all maner of warranties, or all maner of covenants reals, or all manner of demaunds, by such release the warrantie is extinct. And if the warrantie in such case bee pleaded against the heyre in the taple that bringeth his writt of Formedon, to barre the heire of his

his action, if the heire haue and plead the sayd release &c. hee shall defeat the plee in barre &c. and many other causes and matters there bee whereby a may defeat warranties.

And it is to wit, that in the same manner as collaterall warranty may be defeated by matter in deed, or in law, in the same maner may lineall warranty bee defeated, &c. For if the heire in the taile bring a writ of Formedon, and a lineall warranty of his auncestor inheritable by force of the taile be pleaded against him with that ẏ assets be to him discended of fee simple by the same auncester that made the warranty, if the heire that is demandant may aduull and defeate the warrantie, this sufficeth to him: for the discent of other tenements of fee simple make nothing to barre the heire without the warrantie &c.

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